Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

TRI-STATE COACH LINES, INC., on behalf of itself and others similarly situated, SAM VAN GALDER, INC., on behalf of itself and others similarly situated, ADVANTAGE LIMOUSINE, INC., on behalf of itself and others similarly situated,

Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether section 14505(2) of the ICC Termination Act of 1995 (ICCTA), 49 U.S.C. § 14505(2), which expressly forbids a State or political subdivision thereof from collecting or levying a tax, fee, head charge, or other charge on the transportation of a passenger traveling in interstate commerce by motor carrier, prohibits enforcement of a local Airport Departure Tax Ordinance against motor carriers who provide for-hire ground transportation both to destinations across state lines, and to destinations within a single state when transporting passengers who have prearranged their ground transportation?

STATEMENT PURSUANT TO RULE 29.6

The parties named in the caption were the parties before the Appellate Court of Illinois. Pursuant to Rule 29.6 the following affiliations are disclosed: Tri-State Coach Lines, Inc. is wholly owned by VecTour, Inc., Sam Van Galder, Inc. is wholly owned by Coach USA, Inc., and Advantage Limousine, Inc. has no parent company, and no public company owns 10% or more of its stock.

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Petitioners, Tri-State Coach Lines, Inc., Sam Van Galder, Inc. and Advantage Limousine, Inc. (collectively "Petitioners"), on their own behalf and on behalf of the certified classes they represent, respectfully request that a writ of certiorari be issued to review the judgment of the Appellate Court of Illinois, First District.

OPINIONS BELOW

The order of the Circuit Court of Cook County, Illinois (App. 30a) is not published. The opinion of the Appellate Court of Illinois, First District (App. 1a) is reported at 315 Ill. App. 3d 179, 732 N.E.2d 1137 (Ill. App. 2000). The Illinois Supreme Court's denial of Petitioners' Petition for Leave to Appeal (App. 60a) is reported at __ Ill. 2d __, 732 N.E.2d 1137 (2000).

STATEMENT OF JURISDICTION

The judgment of the Appellate Court of Illinois, First District, was entered on June 30, 2000. (App. 1a). The Illinois Supreme Court denied a timely petition for leave to appeal on October 4, 2000. (App. 60a). On December 21, 2000, Justice Stevens, in Application No. 00A552, granted the Petitioners' application for an extension of time for filing this petition for writ of certiorari to and including February 2, 2001.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 14505 of the ICCTA, 49 U.S.C. § 14505, provides as follows:

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
>
> (4) the gross receipts derived from such transportation.

49 U.S.C. § 13102(12) defines "motor carrier" as "a person providing motor vehicle transportation for compensation."

49 U.S.C. § 13102(14) defines "motor vehicle" as

> a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a

> rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

49 U.S.C. § 13102(19) defines "transportation" as including the following:

> (A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and
>
> (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

The MPEA Airport Departure Tax Ordinance, which levies the airport departure tax at issue, and which is promulgated under the auspices of the Illinois Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/13(f) (West 1994), provides, in pertinent part, as follows:

> There is hereby imposed an occupation tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation to passengers for-hire at the following rates:
>
> > (i) Category 1. For each taxi or livery vehicle departure from a commercial service airport with passengers for hire: $2 per departure.

> (ii) Category 2. Except for departures falling within Category 3 below, for each departure from a commercial service airport with passengers for hire: $9 per bus or van with a capacity of 1-12 passengers; $18 per bus or van with a capacity of 13-24 passengers; and $27 per bus or van with a capacity of over 24 passengers.
>
> (iii) Category 3. For each departure from a commercial service airport with passengers for hire in a bus or van operated by a person regulated by the Interstate Commerce Commission or the Illinois Commerce Commission, and operating scheduled service from the airport, and charging fares on a per passenger basis: $1 per passenger.
>
> The ultimate incidence and liability for paying the tax shall be borne by the operator as defined in this ordinance. (Ordinance, § 1-3).

"Operator" means a person who is actually engaged in the business of providing ground transportation to passengers for hire as an owner, . . . (Ordinance, § 1-2).

The Illinois Metropolitan Pier and Exposition Authority Act provides, in pertinent part, as follows:

> (f) By ordinance the Authority shall, as soon as practicable after the effective date of this amendatory act of 1991, impose an occupation

> tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation for hire to passengers in the metropolitan area at a rate of (i) $2 per taxi or livery vehicle departure with passengers for hire from commercial service airports in the metropolitan area, (ii) for each departure with passengers for hire from a commercial service airport in the metropolitan area in a bus or van operated by a person other than a person described in item (iii): $9 per bus or van with a capacity of 1-12 passengers, $18 per bus or van with a capacity of 13-24 passengers and $27 per bus or van with a capacity of over 24 passengers, and (iii) for each departure with passengers for hire from a commercial service airport in the metropolitan area in a bus or van operated by a person regulated by the Interstate Commerce Commission or Illinois Commerce Commission, operating scheduled service for the airport, and charging fares on a per passenger basis: $1 per passenger for hire in each bus or van . . .

70 ILCS 210/13(f) (West 1994).

STATEMENT OF THE CASE

Petitioners provide bus, van, and limousine transportation to airline passengers and personnel traveling to and from Chicago's O'Hare and Midway Airports. The MPEA is a political subdivision, a body politic, and a municipal corporation. In 1992, the Illinois General Assembly authorized an expansion of Chicago's McCormick Place. "To finance the expansion, the General Assembly directed MPEA . . . to issue bonds." *Tri-State Coach Lines, Inc. v. Metropolitan Pier and*

Exposition Authority, 315 Ill. App. 3d 179, 181, 732 N.E.2d 1137, 1139 (Ill. App.), *appeal denied,* __ Ill. 2d __, 732 N.E.2d 1137 (2000). (App. 1a). To repay the bonds, the General Assembly authorized the MPEA to impose, *inter alia,* "an occupation tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation for hire to passengers in the metropolitan area." 70 ILCS 210/13(f) (West 1994). Pursuant to that authority, the MPEA enacted the MPEA Airport Departure Tax Ordinance ("the airport departure tax"). Effective January 1, 1993, the airport departure tax was imposed on the Petitioners each time one of their vehicles left one of the two Chicago commercial service airports (O'Hare International Airport and Midway Airport)[1] with a passenger for-hire, regardless of the destination and regardless of the arrangement between the petitioners and the passengers.

Congress enacted ICCTA in 1995, and it became effective on January 1, 1996. The ICCTA largely transferred the motor carrier regulatory functions of the Interstate Commerce Commission to the Department of Transportation and the Surface Transportation Board. 49 U.S.C. § 13501. Chapter 145 of the ICCTA contains a number of sections addressing "Federal-State Relations." Within Chapter 145, section 14505(2) of the ICCTA prohibits a State or political subdivision thereof from collecting or levying a tax, fee, head charge, or other charge on the transportation of passengers traveling in interstate commerce by motor carrier. 49 U.S.C. § 14505(2). Relying exclusively on that statutory provision, Petitioners filed a class action complaint in the Circuit Court of Cook County,

1. A "commercial service airport" is an airport "receiving scheduled passenger service and enplaning more than 100,000 passengers per year." Under this definition downtown Chicago's Meigs Field is not a "commercial service airport."

Illinois, seeking, *inter alia*, a court order declaring the airport departure tax, as applied against them, to be invalid, and requesting that the court order a permanent injunction restraining the MPEA from imposing the tax on them.[2]

The Class A Petitioners are motor carrier operators who transport airline passengers from Chicago's commercial service airports to destinations in Indiana, Iowa, Michigan, and Wisconsin. The Class B Petitioners are motor carrier operators who transport airline passengers from Chicago's commercial service airports to destinations in Illinois as a prearranged and continuous part of an interstate air and surface transportation journey. The members of both classes maintained that section 14505(2) expressly preempts and prohibits the imposition of the airport departure tax on their business, because they transport passengers traveling in interstate commerce. The MPEA does not dispute that the

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2. Prior to the enactment of ICCTA, the airport departure tax had been unsuccessfully challenged under the equal protection clause of the United States Constitution (U.S. Const., amend. XIV), the interstate commerce clause of the United States Constitution (U.S. Const., art. I, § 8) and the uniformity clause of the Illinois Constitution (Ill. Const., art. I, § 8). *Allegro Services, Ltd. v. Metropolitan Pier and Exposition Authority*, 172 Ill. 2d 243, 665 N.E.2d 1246 (1996). *See also Terry v. Metropolitan Pier and Exposition Authority*, 271 Ill. App. 3d 446, 648 N.E.2d 1047 (Ill. App. 1995). The Illinois Supreme Court expressly declined in *Allegro Services* to address issues concerning the impact of the ICCTA, which had been enacted after oral argument in that case, stating that "Section 14505 has no bearing on the constitutional challenges asserted in the trial court and raised on appeal to this court. At this late stage in the proceedings, we decline to consider an entirely new theory of the case that was neither pleaded below nor briefed or argued before this court." *Id.* at 246 n.1; 665 N.E.2d at 1246 n.1.

airport departure tax, as imposed on Petitioners and other class members, constitutes a "tax, fee, head charge, or other charge" within the meaning of section 14505. Instead, with respect to the Class A Petitioners, MPEA argues that the "legislative history [of section 14505] confirms that Congress intended only to preclude disproportionate state taxes on the sale of interstate bus tickets." *Tri-State Coach Lines*, 315 Ill. App. 3d at 193, 648 N.E.2d at 1148 (App. 21a). With respect to Class B Petitioners, MPEA argues that section 14505(2) does not prohibit the imposition of the airport departure tax ordinance, "because any interstate travel undertaken by the passengers whom Class B transports is not by 'motor carrier' designated in section 14505(2) of the ICCTA, but by airplane." *Tri-State Coach Lines*, 315 Ill. App. 3d at 188, 732 N.E.2d at 1144 (App. 13a).

The Circuit Court certified the classes and ordered the case to proceed as a class action. (App. 35a). The Petitioners and the MPEA then filed cross motions for summary judgment. The Circuit Court granted summary judgment in favor of the Class A members, ruling that section 14505(2) expressly preempts the imposition of the airport departure tax as to the Class A members, because they transport passengers across state lines (App. 31a). The Circuit Court further ruled that section 14505(2) did not prohibit imposition of the airport departure tax on the Class B members, because they do not transport passengers across state lines, and because the Class B members' ground transportation had not been rendered "interstate" in character by the continuity of its prearrangement. The Circuit Court granted summary judgment in favor of the MPEA and against the Class B members. (App. 31a). Both parties appealed.

The Illinois Appellate Court, First District, reversed the Circuit Court's ruling as to the Class A members who transport passengers across state lines. In so ruling, the Appellate Court held that "Congress, in enacting section 14505, did not intend to preempt the levying of the airport departure tax here even upon the transportation services provided by Class A." 315 Ill. App. 3d at 194, 732 N.E.2d at 1149. (App. 23a). The Appellate Court ruled that "the text, structure, and history of Section 14505, as well as related provisions in the ICCTA, indicate no congressional intent to preempt taxes on motor carrier departures from airports to homes, hotels, and businesses in communities served by those airports, even if those communities are located in another state." 315 Ill. App. 3d at 198; 732 N.E.2d at 1151. (App. 29a). The Appellate Court also affirmed the Circuit Court's ruling as to the Class B members who transport passengers with prearranged ground transportation. The Appellate Court's principal rationale was that

> Congress' exclusive focus in enacting section 14505 was to ensure that the tickets for interstate city-to-city bus trips, trips often passing through multiple states and having minimal contact with the state of their origin, were not taxed by the originating state in a manner disproportionate to the benefits received in that state.

Id. at 192, 732 N.E.2d at 1147 (App. 20a). The Appellate Court also ruled that section 14505(2) is inapplicable to the airport departure tax, because the airport departure tax is imposed not on the transportation of passengers traveling in interstate commerce, but only upon the departures of commercial vehicles from O'Hare and Midway. *See* footnote 3, *infra*.

Thereafter, the Illinois Supreme Court declined discretionary review without comment. This petition follows.

REASONS FOR GRANTING THE WRIT

I. THE APPELLATE COURT'S RESTRICTIVE INTERPRETATION OF SECTION 14505(2)'S PREEMPTION LANGUAGE CONFLICTS WITH THIS COURT'S CONSTRUCTION IN *ALOHA AIR LINES, INC. v. DIRECTOR OF TAXATION OF HAWAII*, OF VIRTUALLY IDENTICAL PREEMPTION LANGUAGE EMPLOYED IN THE AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973.

Section 14505(2) of the ICCTA expressly prohibits States or their political subdivisions from collecting a tax, fee, head charge, or other charge on the transportation of passengers traveling in interstate commerce by motor carrier. The language Congress employed in section 14505(2) is virtually identical to language that it had used years earlier in Section 7(a) of the Airport Development Acceleration Act of 1973 (ADAA), 49 U.S.C. § 1513(a), which prohibited States and their political subdivisions from levying or collecting "a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom." *Id.* Significantly, this Court in *Aloha Airlines, Inc. v. Director of Taxation of Hawaii*, 464 U.S. 7, 104 S. Ct. 291 (1983), held that by virtue of its "plain language," Section 1513(a) of the ADAA expressly preempted the imposition of state and local taxes on the transportation of air passengers. *Id.* at 11, 104 S. Ct. at 294. Although the

direct applicability of this Court's *Aloha Airlines* decision was argued to the Appellate Court, the Appellate Court did not address this Court's decision in *Aloha Airlines* in its opinion. This Court should grant this petition for the issuance of a writ of certiorari to ensure that the ICCTA is construed in a manner that is consistent with, and does not conflict with, this Court's precedent.

Preemption "is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57, 111 S. Ct. 403 (1990) (internal quotation marks omitted); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S. Ct. 2890 (1983). "The question, at bottom, is one of statutory intent." *Morales v. Trans World Airlines*, 504 U.S. 374, 383, 112 S. Ct. 2031, 2036 (1992). For this reason, this Court "begin(s) with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales*, 504 U.S. at 383, 112 S. Ct. at 2036, *citing Holliday*, 498 U.S. at 57, 111 S. Ct. at 406; *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194, 105 S. Ct. 658 (1985). This is especially true, where, as here, Congress used virtually identical language to express a preemptive purpose as it had in other statutes. *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031 (1992) (preemptive language in the Airline Deregulation Act of 1978, 49 U.S.C. § 1305(a)(1), virtually identical to that contained in the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a), is construed as being equally broadly preemptive).

In *Aloha*, this Court was called upon to interpret section 1513(a) of the ADAA, which states, in pertinent part, as follows:

> No State . . . shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on gross receipts derived therefrom . . .

This Court ruled that the foregoing language unambiguously "proscribes the imposition of state and local taxes on the gross receipts derived from air transportation or the carriage of persons in air commerce." *Aloha*, 464 U.S. at 14-15, 104 S. Ct. at 295. Accordingly, this Court held that the Hawaii Supreme Court had erred in looking beyond the plain language of section 1513 in order to uphold a Hawaii tax on the gross income of airlines operating within Hawaii. Here, the Appellate Court has improperly restricted virtually identical statutory language of express preemption in the same way the Hawaii Supreme Court did — by avoiding the plain language of a federal statute prohibiting the imposition of local taxes on an industry affecting interstate commerce. The two decisions cannot reasonably be reconciled.

The Appellate Court's ruling that Congress did not mean "to preempt taxes on motor carrier departures from airports to homes, hotels, and businesses in communities served by airports, even if those communities are located in another state," *Tri-State Coach Lines, Inc.*, 315 Ill. App. 3d at 197-98, 732 N.E.2d at 1151 (App. 29a), is premised on: (1) legislative history set forth in the House and Conference

Reports which indicates an intention to override this Court's decision in *Oklahoma Tax Com'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 115 S. Ct. 1331 (1995); and (2) the fact that some of the plaintiffs' activities, under the authority of ICCTA, are exempted from federal regulation by the Surface Transportation Board, *Tri-State Coach Lines, Inc.*, 315 Ill. App. 3d at 191-92, 95-96; 732 N.E.2d at 1146-7, 1150-51 (App. 18a-20a; 25a-26a). Neither reason supports the Appellate Court's conclusion.

In *Jefferson Lines*, this Court held that the Commerce Clause did not prohibit Oklahoma from levying a sales tax on the full price of a ticket for bus travel from Oklahoma to another state. The Appellate Court accurately points out that one of the reasons expressed in the House and Conference Report for Congressional enactment of § 14505 of ICCTA was to override this Court's *Jefferson Lines* decision. *Id.*, *citing* S. Rep. No. 104 — 176, at 48 (1995); H.R. Conf. Rep. No. 104 — 422, at 220. The above-cited Senate Report states that "[Section 14505] is intended to override a recent court decision permitting such a tax." The House of Representatives Conference Report provides that "[section 14505] reverses a recent Supreme Court decision permitting states [to levy a tax on bus tickets for interstate travel] and conforms taxation of bus tickets to that of airline tickets". On the basis of those references, the Appellate Court concluded that Congress' exclusive reason for enacting section 14505 was "to ensure that the tickets for interstate city-to-city bus trips . . . were not taxed by the originating state in a manner disproportionate to the benefits received by that state." *Tri-State Coach Lines, Inc.*, 315 Ill. App. 3d at 192, 732 N.E.2d at 1147 (App. 20a).

However, the statement in the House of Representatives Conference Report that the purpose of section 14505 is also to conform taxation of bus tickets to that of airline tickets discredits the Appellate Court's conclusion. The House Report indicates overriding *Jefferson Lines* was not the exclusive reason for enacting section 14505. The House Report indicates that Congress reacted to *Jefferson Lines* in the exact same manner that Congress had previously reacted in 1972 when this Court, in *Evansville-Vanderburgh Airport Authority v. Delta Airlines, Inc.*, 405 U.S. 707, 92 S. Ct. 1349 (1972), upheld the charges imposed by state and local governments on passengers traveling in air commerce. Shortly after the *Evansville-Vanderburgh* decision, Congress enacted the air travel exemption contained in the ADAA, *Aloha*, 464 U.S. at 9, 104 S. Ct. at 243, using language virtually identical to section 14505, to expressly prohibit state or local governments from imposing any tax, fee or charge on air commerce. In *Aloha*, this Court interpreted the ADAA's air travel exemption in a manner consistent with Petitioner's argument here.

The Appellate Court, in contravention of this Court's precedents, essentially gave authoritative weight to these passages of legislative history that are not anchored in the text of the statute. *Compare Shannon v. United States*, 512 U.S. 573, 583, 114 S. Ct. 2419, 2426 (1994) ("We are not aware of any case . . . in which we have given authoritative weight to a single passage of legislative history that is not in any way anchored in the text of the statute."). This Court has held that when a federal statute "contains a phrase that is unambiguous — that has a clearly accepted meaning in both legislative practice — we do not permit it to be . . . contracted by the statements of individual legislators or committees during the course of the enactment process." *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 98-99, 111 S. Ct. 1138,

1147 (1991), *citing United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 111 S. Ct. 1138, 1147 (1989). To be sure, the expansive language of section 14505 preempts state and local taxation of city-to-city bus trips. The language is more broadly preemptive than that, however. There is, for example, no limitation in section 14505(2) to travel by bus, and, as the Appellate Court itself noted, "MPEA does not argue that the inclusion of taxis and liveries with buses in Class A was improper." *Tri-State Coach Lines*, 315 Ill. App. 3d at 193 n.3, 732 N.E.2d at 1148 n.3 (App. 22a). Section 14505(2) employs the words "motor carrier," which are defined in 49 U.S.C. § 13102(12) as "a person providing motor vehicle transportation for compensation." "Motor vehicle," not surprisingly, is also broadly defined as "a vehicle, machine . . . drawn by mechanical power and used on a highway in transportation." 49 U.S.C. § 13102(14). "Transportation" is similarly broadly defined as "a motor vehicle . . . of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use," and "services related to that movement, including arranging for, . . . delivery . . . of passengers and property." 49 U.S.C. § 13102(19).

Nor is there a limitation contained in section 14505 to "city-to-city" trips. Section 14505(2) uses the term "interstate commerce," which has not been statutorily defined since 1982, when the definition was removed from the Interstate Commerce Act. However, as will be demonstrated below, the term "interstate commerce" has acquired statutory and common law meaning embracing all of the activities of Class A and Class B members, including prearranged ground transportation of interstate passengers.

To be further assured that the Appellate Court's view is wrong, this Court need only read all four sub-paragraphs of § 14505. Although subparagraphs (3) and (4) do address local taxation of bus tickets sold for interstate travel by preempting taxes on the sale of passenger transportation and the gross receipts from such transportation, paragraphs (1) and (2) address entirely different activities. If preempting local taxes on the sale of bus tickets for interstate travel was Congress' sole intent, then there would be no conceivable explanation for why Congress added the broad language of paragraphs (1) and (2) to preempt taxation of passengers and the transportation of passengers traveling in interstate commerce.

The Appellate Court's second reason, *i.e.*, its reliance on the breadth of the Surface Transportation Board's authority under ICCTA to regulate motor carriers as also serving as the measure of the breadth of Congress' preemptive authority is an argument that has been previously rejected by two federal courts when other municipalities employed that argument trying to limit the breadth of different preemptive sections contained in Chapter 145 of ICCTA. The United States District Court rejected the same "jurisdiction graft" argument when the City of New Orleans attempted to similarly limit the breadth of another Chapter 145 preemption. In *Greyhound Lines v. City of New Orleans*, 29 F. Supp. 2d 339 (E.D. La. 1998), the City of New Orleans tried to escape a preemption by arguing that it was inconsistent with a jurisdictional exception appearing in Chapter 135 of the Act, the chapter defining the Surface Transportation Board's regulatory jurisdiction. The district court rejected that construction. It emphasized that, as in this case, Congress did not condition the preemption by stating that it was subject to jurisdiction under Chapter 135 [the jurisdiction Chapter]. *Id.* at 345. The district court held

that the breadth of the preemption under consideration was not restricted by any of the provisions contained in the jurisdiction chapter of ICCTA. The district court relied on *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537, 114 S. Ct. 1757 (1994), holding that "it is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section but omits it in another." *Id.* at 345. *See also Harris City Wrecker Owners v. City of Houston*, 943 F. Supp. 711 (S.D. Tex. 1996) (holding that the regulatory exclusion contained in the jurisdictional chapter of the ICCTA [Chapter 135] plays no role in construing the breadth of the preemption Congress expressed in the preemption chapter of ICCTA [Chapter 145]).

An examination of the ICCTA's purpose, and an analysis of section 14505(2) in the context of the ICCTA as a whole, further reveals that section 14505(2) expressly preempts the airport departure tax. Congress enacted the ICCTA to abolish the 108-year-old Interstate Commerce Commission and to substantially deregulate the rail and motor carrier industries. Chapter 145 of the ICCTA is devoted to "Federal-State Relations" and the language of certain provisions closely mirrors the language Congress employed to state express preemptions affecting the airline industry. As the Appellate Court below recognized, section 14501(a), which admittedly is not at issue in this appeal, forbids any state or local regulation relating to the scheduling of interstate or intrastate transportation and the rates incurred thereunder. *Tri-State Coach Lines, Inc.*, 315 Ill. App. 3d at 196, 732 N.E.2d at 1150 (App. 25a). *See also Greyhound Lines, Inc. v. City of New Orleans*, 29 F. Supp. 2d 339 (E.D. La. 1998) (section 14501(a), as amended, expressly preempts municipal regulations requiring motor carrier drivers to obtain

municipal permits). Section 14501(a)'s language (i.e., "No State or political subdivision . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to . . .") closely parallels that contained in section 1305(a)(1) of the Airline Deregulation Act of 1978, 49 U.S.C. App. § 1301, *et seq.*, which this Court found preemptive of any state or local law that had a connection with or reference to rates, routes, or services of an air carrier. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S. Ct. 2031 (1992).

Other provisions of Chapter 145 have also been held preemptive of state laws and regulations. The Appellate Court below held that section 14502(b)(3), 49 U.S.C. § 14502(b)(3) (Supp. II 1997) expressly preempts any state or local ad valorem property tax on motor carrier transportation property at a rate higher than on other commercial and industrial property in the same jurisdictional area. *Tri-State Coach Lines, Inc.*, 315 Ill. App. 3d at 196, 732 N.E.2d at 1150 (App. 25a-26a). So too section 14501(c) has been held to generally preempt "state and local regulations of the intrastate towing industry," *Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765 (2d Cir. 1999), although statutory exemptions are applicable. *See also R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538 (11th Cir. 1998); *Harris County Wrecker Owners for Equal Opportunity v. City of Houston*, 943 F. Supp. 711 (S.D. Tex. 1996). The Appellate Court's improperly restrictive interpretation of section 14505(2)'s preemptive scope cannot be reconciled with these precedents, and these subsections corroborate the broadly preemptive purposes of Chapter 145. Moreover, Congress' efforts at deregulation will be undermined by the Appellate Court's strict, and improper, circumscription of language broadly preempting state and local taxes on transportation activities identified in section 14505.

II. THE APPELLATE COURT'S RULING THAT THE PETITIONERS' GROUND TRANSPORTATION ACTIVITIES DO NOT CONSTITUTE THE TRANSPORTATION OF PASSENGERS "TRAVELING IN INTERSTATE COMMERCE" CONFLICTS WITH CONSISTENT PRECEDENTS OF STATE AND FEDERAL COURTS.

The Appellate Court also improperly concluded that the term interstate commerce does not include the commercial transportation of persons from Illinois to other States, or transportation within a single state, when the ground transportation is prearranged as the continuation of an interstate trip.[3] These rulings contravene long-established precedents of federal and state courts. The transportation of people or property across a single state line has always constituted "interstate commerce" by statutory and judicial definition.

The Appellate Court's view that the term "interstate commerce" triggers judicial construction is inconsistent with

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3. The Appellate Court also ruled that Section 14505(2) prohibiting the state taxation of the "transportation of passengers traveling in interstate commerce by motor carrier" is inapplicable to the Petitioners' business because the subject tax is imposed on the departure of commercial vehicles from airports, not upon the transportation of commercial vehicles. *Tri-State Coach Lines*, 315 Ill. App. 3d at 195, 732 N.E.2d at 1150 (App. 25a). That ruling is also incorrect. The airport departure tax is ". . . an occupation tax on all persons . . . engaged in the business of providing ground transportation for hire to passengers in the metropolitan area at the rate of . . ." 70 ILCS 210/13(f); MPEA Airport Departure Tax Ordinance, § 1-3. The MPEA could not possibly tax anyone for departing the airports because the MPEA neither owns nor controls the airports.

the decisions of this Court and other federal and state courts. Over the years, the judiciary has consistently been called upon to decide if a particular style, mode, or manner of transportation falls within the definition of interstate commerce. Significantly, this Court has resolved that question on the basis of common law principles, not by construing each underlying statute to discern what Congress might have been contemplating when it used the words "interstate commerce." (*See, e.g., United States v. Yellow Cab*, 332 U.S. 218, 231, 67 S. Ct. 1560 (1947) (in determining whether local taxicab transportation of passengers who previously traveled by train constituted interstate commerce for Sherman Act purposes, this Court said: ". . . interstate commerce is an intensely practical consideration drawn from the normal and accepted course of business"). *See also United States v. Capital Transit Company*, 325 U.S. 357, 363, 65 S. Ct. 1176 (1945) (in determining whether the Interstate Commerce Commission had jurisdiction under the Motor Carrier Act to regulate fares for transportation of passengers between Washington, D.C. and neighboring states, this Court said that interstate journeys are to be measured by the "commonly accepted sense of the transportation concept."). The Appellate Court's conclusion that the Plaintiffs are not transporting passengers in interstate commerce is a departure from these decisions and their progeny.

Whenever the ground transportation segment of a passenger's trip has been prearranged, the courts have consistently held that the ground transportation is a continuation of the interstate trip. *See Executive Town and Country Services v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986) (in-state limousine service constitutes interstate

commerce because 90% of company's business consisted of prearranged trips to or from Atlanta Hartsfield International Airport); *Charger Limousine v. Dade County Board of Tax Commissioners*, 678 F.2d 586, 589 (5th Cir. 1982) ("prearrangement places the operation within the stream of interstate commerce, even though they take place wholly within a single state."); *Southerland v. St. Croix Taxicab Association*, 315 F.2d 364 (3d Cir. 1963) (when local transportation has been arranged in advance, it is an integral part of an interstate journey); *Airlines Transportation v. Tobin*, 198 F.2d 249 (4th Cir. 1952) (where the arrangement for the motor carrier segment of the passenger's trip is made by the airline carrier, it is the common understanding that an air traveler begins the interstate movement when he enters the limousine to be carried to the airport); *Airline Car Rental v. Shreveport Airport Authority*, 667 F. Supp. 293 (W.D. La. 1996) (plaintiff's allegation that 80% of its local business was derived from prearranged reservations stated an interstate commerce claim); *Yellow Cab Company of Boca Raton Inc. v. Broward County*, 282 So. 2d 1 (Fla. Dist. Ct. App. 1973) (activities of cab company in connection with picking up interstate "package" or "prepaid" passengers constituted interstate commerce); *Port of Portland v. Bilic*, 757 P.2d 423, 426, 427 (Or. Ct. App. 1988) (determinative factor in deciding whether particular mode of transportation between interstate airport or train station and the local destination is part of interstate commerce is character of arrangements between transporter and passenger).

III. THE APPELLATE COURT'S DECISION HAS SIGNIFICANT NATIONWIDE PRACTICAL IMPLICATIONS.

Motor carriers are providing the same kind of interstate transportation at issue in this case from airports in New York City, Washington, D.C., St. Louis, Las Vegas, Kansas City, and other cities. Undoubtedly, these other local authorities may rely on this Illinois decision to disregard the plain language of section 14505 in order to impose the preempted taxes on those motor carriers. The Illinois decision has implications that extend beyond the taxation of motor carriers transporting passengers in interstate commerce. If Illinois' aberrant doctrine of judicial construction is allowed to proliferate, then the door will be opened for state and local taxation of other industries where Congress has similarly preempted local taxation. The Court should grant certiorari to review this departure from the long established doctrine designed to ensure that the States respect the plain language of express federal preemptions.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION DATED JUNE 30, 2000

June 30, 2000

APPELLATE COURT OF ILLINOIS
FIRST DISTRICT, THIRD DIVISION

No. 1-98-3322

TRI-STATE COACH LINES, INC., et al.,

Plaintiffs-Appellants,
Cross-Appellees,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Defendant-Appellee,
Cross-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable John A. Ward, Judge Presiding.

JUSTICE BURKE delivered the opinion of the court:

Plaintiffs Tri-State Coach Lines, Inc., and certified members of Class B(1) and Class B(2) (Class B), appeal from an order of the circuit court granting summary judgment against them and in favor of defendant Metropolitan Pier and Exposition Authority (MPEA) in a class action lawsuit

filed by plaintiffs, ultimately certified by the court as Class A and Class B members, who sought, *inter alia*, a declaration determining whether MPEA's imposition of an airport departure tax on plaintiffs' ground transportation services violated section 14505(2) of the Interstate Commerce Commission Termination Act of 1995 (49 U.S.C. §14505(2) (Supp. II 1997)), which forbids state and local taxation on certain interstate travel. MPEA cross-appeals from the same order granting summary judgment against it and in favor of Class A. For the reasons set forth below, we affirm in part and reverse in part.

In 1992, the Illinois General Assembly, in enacting Public Act 87-733 (Pub. Act 87-733, eff. July 1, 1992), amended the Metropolitan Pier and Exposition Authority Act (MPEA Act) (70 ILCS 210/1 *et seq.* (West 1994)) to authorize a $1 billion expansion of Chicago's McCormick Place. To finance the expansion, the General Assembly directed MPEA, a political subdivision of local government, a body politic, and a municipal corporation responsible for, *inter alia*, the construction of facilities at McCormick Place, to issue bonds. See 70 ILCS 210/13.2 (West 1994). To repay the bonds, the General Assembly authorized MPEA to impose certain new local taxes, including "an occupation tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation for hire to passengers in the metropolitan area." 70 ILCS 210/13(f) (West 1994). The General Assembly then directed MPEA to levy this occupation tax at a specified rate upon each " taxi or livery vehicle [or bus or van] departure with passengers for hire from [Chicago's] commercial service airports." 70 ILCS 210/13(f) (West 1994).

Appendix A

In accordance with the MPEA Act, MPEA enacted the MPEA Airport Departure Tax Ordinance (Ordinance), which became effective January 1, 1993. The Ordinance requires the levying of an airport departure tax, otherwise known as the MPEA Airport Departure Tax, upon the following specific categories of providers of ground transportation:

> "(i) Category 1. For each taxi or livery vehicle departure from a commercial service airport with passengers for hire: $2 per departure.
>
> (ii) Category 2. * * * [F]or each departure from a commercial service airport with passengers for hire: $9 per bus or van with a capacity of 1-12 passengers; $18 per bus or van with a capacity of 13-24 passengers; and $27 per bus or van with a capacity of over 24 passengers.
>
> (iii) Category 3. For each departure from a commercial service airport with passengers for hire in a bus or van operated by a person regulated by the Interstate Commerce Commission or the Illinois Commerce Commission, and operating scheduled service from the airport, and charging fares on a per passenger basis: $1 per passenger." Ordinance §1-3.

Shortly after its imposition, the airport departure tax became the subject of two separate constitutional challenges. In *Allegro Services, Ltd. v. Metropolitan Pier and Exposition Authority*, 172 Ill. 2d 243, 665 N.E.2d 1246 (1996), a case filed by some of the same plaintiffs who have filed this action,

our supreme court held that the airport departure tax, as applied to suburban and out-of-state ground transportation operators providing passenger service from Chicago's airports to destinations beyond the city limits, does not violate the equal protection clause of the United States Constitution (U.S. Const., amend. XIV), the interstate commerce clause of the United States Constitution (U.S. Const., art. I, §8), or the uniformity clause of the Illinois Constitution (Ill. Const. 1970, art. IX, §2). *Allegro*, 172 Ill. 2d at 260, 269. In *Terry v. Metropolitan Pier and Exposition Authority*, 271 Ill. App. 3d 446, 648 N.E.2d 1047 (1995), this court rejected similar constitutional claims made by vehicle operators who were being taxed under the Ordinance pursuant to their ground transportation of passengers into Chicago's city limits. *Terry*, 271 Ill. App. 3d at 452-56.

On February 7, 1996, plaintiffs in the present case, all ground transportation operators engaged in the business of transporting passengers for-hire by bus, taxi, or livery from Chicago's O'Hare International Airport (O'Hare) and Midway Airport (Midway) to destinations in Illinois, northern Indiana, and southern Wisconsin, filed a class action lawsuit on behalf of themselves and others similarly situated, challenging the levying of the airport departure tax upon them, not on any constitutional basis, but on a new statutory provision contained in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803 (codified at 49 U.S.C. § 13101 *et seq.* (Supp. II 1997)), which became effective January 1, 1996. Section 14505(2) of the ICCTA, upon which plaintiffs rely, provides that "[a] State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on * * * the

transportation of a passenger traveling in interstate commerce by motor carrier." 49 U.S.C. §14505(2) (Supp. II 1997).

In their class action complaint, as amended, and numerous subsequent pleadings, plaintiffs alleged that the clear language of section 14505(2) protects from local taxation the commercial ground transportation activities of plaintiffs' proposed class members. Plaintiffs' proposed Class A consisted of commercial operators providing for-hire ground transportation to passengers departing from O'Hare and Midway and destined for locations beyond Illinois' border. Plaintiffs' proposed Class B consisted of those commercial operators providing for-hire ground transportation to passengers departing from O'Hare and Midway and destined for locations within Illinois' border who prearranged their ground transportation as one component of an interstate journey by air. Plaintiffs maintained that both proposed Class A and Class B are transporting passengers traveling in interstate commerce and, thus, the airport departure tax, as applied against each class, violates section 14505(2)'s prohibition against state and local taxation of "the transportation of a passenger traveling in interstate commerce by motor carrier." Stated another way, plaintiffs alleged that section 14505(2) of the ICCTA, as applied against them, preempts and prohibits imposition of the airport departure tax. Accordingly, plaintiffs sought, inter alia, a court order declaring the airport departure tax, as applied against them, invalid and an injunction restraining MPEA from collecting the airport departure tax.

In its response to plaintiffs' class action complaint and request for injunctive relief, MPEA argued, *inter alia*, that

the legislative history of section 14505 indicates that Congress had intended to preempt only state and local taxation of tickets purchased by passengers traveling interstate on buses. Therefore, MPEA argued, section 14505(2) applied, if at all, to only a small fraction of plaintiffs' ground transportation activities taxed under the Ordinance. MPEA, consequently, filed a motion for judgment on the pleadings with respect to the allegations brought on behalf of proposed Class B.

The trial court granted MPEA's motion, finding that plaintiffs had not stated a cause of action with respect to Class B but had with respect to Class A. The court determined that section 14505(2) prohibits levying the airport departure tax on departures from O'Hare and Midway to destinations located beyond Illinois' border but does not prohibit levying the airport departure tax on departures from O'Hare and Midway to destinations located within Illinois. Upon the parties' agreement, the court subsequently vacated its order awarding judgment on the pleadings in favor of MPEA as to Class B so that the issue could be resolved by summary judgment.

The trial court ordered the case to proceed as a class action, and it certified Class A and Class B, dividing Class B into Classes B(1) and B(2). Class A consists of those ground transportation operators who provide for-hire passenger transportation from O'Hare and Midway to destinations located in northern Indiana and southern Wisconsin. Class B consists of those operators who provide service to destinations located within Illinois "where the

passengers have prearranged[1] their ground transportation as part of their interstate and/or foreign travel by air" (Class B(1)) or are "traveling on a through ticket pursuant to a motor carrier and airline master purchase of service agreement" (Class B(2)). Plaintiffs and MPEA then filed cross-motions for summary judgment, and the trial court granted summary judgment in favor of plaintiffs and against MPEA as to Class A (those operators providing service to destinations outside Illinois) and against the plaintiffs and in favor of MPEA as to Class B (operators providing prearranged service to destinations within Illinois). This appeal and cross-appeal followed.

Given the procedural posture of this case, we initially address the question of whether the trial court should have dismissed plaintiffs' action for lack of jurisdiction based on plaintiffs' failure to exhaust their administrative remedies. According to our supreme court:

> "It is well established that, in cases which seek to avoid the statutory procedures relating to the assessment and collection of taxes, relief by way of declaratory judgment should not be afforded in a tax case that did not merit relief in chancery by way of injunction. [Citations.] Although the existence of another remedy does not ordinarily preclude bringing an action for declaratory

1. Plaintiffs define "prearrangement" as "the arrangement of the single-state ground segment of the trip by the passenger, the air carrier, or by a third party, such as the travel agency or charter service, prior to the commencement of the cross-border air segment of the passenger's journey."

> judgment, in revenue cases it is the rule, applying general equitable principles, that relief by way of declaratory judgment is not available if the statute provides an adequate remedy at law." *People ex rel. Fahner v. American Telephone & Telegraph Co.*, 86 Ill. 2d 479, 484-85, 427 N.E.2d 1226 (1981).

Judicial scrutiny by way of equity is improper where administrative review is available under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 1996)). See *Illinois Bell Telephone Co. v. Allphin*, 60 Ill. 2d 350, 353-57, 326 N.E.2d 737 (1975) (overturning *Owens-Illinois Glass Co. v. McKibbin*, 385 Ill. 245, 52 N.E.2d 177 (1943)); *accord County of Knox ex rel. Masterson v. Highlands L.L.C.*, 188 Ill. 2d 546, 551-52, 723 N.E.2d 256 (1999). As explained in *Allphin*, the rationale underlying the doctrine of exhaustion of administrative remedies (exhaustion doctrine), which includes administrative review in the circuit court, is that "(1) it allows full development of the facts before the agency; (2) it allows the agency an opportunity to utilize its expertise; and (3) the aggrieved party may succeed before the agency, rendering judicial review unnecessary." *Allphin*, 60 Ill. 2d at 358. The Administrative Review Law applies to, and governs,

> "every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of * * * this [Law] or its predecessor, the Administrative Review Act. * * * In all such cases, any other

> statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not hereafter be employed." 735 ILCS 5/3-102 (West 1996).

See *e.g.*, *Midland Hotel Corp. v. Director of Employment Security*, 282 Ill. App.3d 312, 317-19, 668 N.E.2d 82 (1996) (exhaustion doctrine applied because the agency had exclusive jurisdiction in the case and administrative review was the sole remedy for challenging the agency's orders).

Pursuant to our request during oral arguments, the parties briefed the applicability of the exhaustion doctrine in this appeal, and we are persuaded that the trial court had jurisdiction to reach the merits. First, as plaintiffs' correctly argue, the MPEA Act (70 ILCS 210/13(f) (West 1996)), the legislation conferring power to MPEA to impose the airport departure tax, did not expressly adopt the Administrative Review Law provisions.[2] Rather, the Ordinance enacted by

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2. We note that the other subsections of section 13 of the MPEA Act, *i.e.*, sections 13(b), (c), (d), and (e), relating to MPEA's taxing power, do expressly adopt the Administrative Review Law. Section 13(b) of the MPEA Act incorporates section 11 of the Retailers' Occupation Tax Act (35 ILCS 120/11a (West 1996)), which expressly adopts the Administrative Review Law. Section 13(c) of the MPEA Act incorporates the provisions contained in the Hotel Operators' Occupation Tax Act, which expressly adopts the Administrative Review Law. See 35 ILCS 145/10 (West 1996). Sections 13(d) and (e) of the MPEA Act incorporate sections 3 and 4, respectively, of the Automobile Renting Occupation and Use Tax Act (35 ILCS 155/3, 4 (West 1996)), which expressly adopt the Administrative Review Law by their incorporation of the provisions contained in the Retailers' Occupation Tax Act.

MPEA pursuant to MPEA's authority under the MPEA Act, merely provides that plaintiffs await determinations by the MPEA collector in accordance with the procedures provided in the Ordinance (MPEA Airport Departure Ordinance, Article V, Procedures).

Secondly, we find that exceptions to the general requirement of strict compliance with the exhaustion doctrine exist in the instant case. See generally, *Northwestern University v. City of Evanston*, 74 Ill. 2d 80, 86-88, 383 N.E.2d 964 (1978); *Allphin*, 60 Ill. 2d at 358. The one we find applicable here is that a party need not exhaust his administrative remedies before seeking judicial relief if his complaint attacks the constitutionality of a statute, ordinance, or administrative rule on its face. See *Northwestern University*, 74 Ill. 2d at 86; see, *e.g.*, *County of Kane v. Carlson*, 116 Ill. 2d 186, 198-99, 507 N.E.2d 482 (1987) (statute); *Phillips v. Graham*, 86 Ill. 2d 274, 289, 427 N.E.2d 550 (1981) (statute); *City of Chicago v. Illinois Commerce Comm'n*, 79 Ill. 2d 213, 217-18, 402 N.E.2d 595 (1980) (administrative rule); *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 977, 713 N.E.2d 754 (1999) (ordinance).

Plaintiffs in the present case allege in their complaint that MPEA's imposition of the airport departure tax upon them violates section 14505 of the ICCTA. MPEA, in its verified answer, admits that it imposed the airport departure tax upon plaintiffs and further states that plaintiffs' other allegations were conclusions of law requiring no response. In their supplemental briefs filed after oral arguments, plaintiffs and defendant challenge the Ordinance as "fatally defective on its face because it conflicts with the federal

statute [49 U.S.C. §14505]," and they argue that plaintiffs' allegation that section 14505 preempts the airport departure tax under any set of facts makes it a facial challenge to the constitutionality of the departure tax under the supremacy clause (U.S. Const., art. VI).

We agree with plaintiffs and defendant. As our supreme court has stated, "[t]he preemption doctrine is rooted in the supremacy clause of the United States Constitution." *Orman v. Charles Schwab & Co., Inc.*, 179 Ill. 2d 282, 285, 688 N.E.2d 620 (1997). "Under the Supremacy Clause (U.S. Const. Art. VI), Federal law pre-empts State law when the latter 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' " *Ginn v. Consolidation Coal Co.*, 107 Ill. App. 3d 564, 565, 437 N.E.2d 793 (1982), quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 85 L. Ed. 581, 61 S. Ct. 399 (1941). Plaintiffs, in the case at bar, unlike the plaintiffs in *Silver Fox Limousine v. City of Chicago*, 306 Ill. App. 3d 103, 713 N.E.2d 583 (1999), who challenged the application of the City of Chicago's ground transportation tax and, therefore, had to exhaust their administrative remedies before seeking judicial review, plaintiffs here raised a constitutional preemption claim and were, in essence, challenging the Ordinance as being facially invalid, rather than invalid as applied to them. Consequently, plaintiffs were not required to exhaust their administrative remedies. See generally *Phillips*, 86 Ill. 2d at 289 (noting that if a party's claim is that a statute on its face was applied in a discriminatory or arbitrary manner rather than being unconstitutional, the party filing the complaint must first seek relief through the applicable administrative remedies); compare *Sanders v. City of Springfield*, 130 Ill. App. 3d 490,

493, 474 N.E.2d 438 (1985) (reaching the merits of the plaintiff's preemption claim) and *Ginn*, 107 Ill. App. 3d at 567-68 (same), with *Midland Hotel*, 282 Ill. App. 3d at 319-21 (affirming dismissal of a complaint because the complaint did not challenge the facial validity of the statute but, rather, challenged the agency's interpretation and application of the statute's provisions) and *Head-On Collision Line, Inc. v. Kirk*, 36 Ill. App. 3d 263, 267-69, 343 N.E.2d 534 (1976) (same).

Another exception to the exhaustion doctrine that we find applicable to the present case is "where no issues of fact are presented or agency experience involved." *Office of the Cook County State's Attorney v. Illinois Local Labor Relations Board*, 166 Ill. 2d 296, 306-07, 652 N.E.2d 301 (1995) (stating that where an issue can be resolved by statutory and case law interpretation, it falls within a court's expertise and not an administrative agency's); see, *e.g.*, *County of Knox*, 188 Ill. 2d at 552 (agency's particular expertise was not implicated in the necessary statutory interpretation); *Soo Line R.R. Co. v. Hynes*, 269 Ill. App. 3d 81, 93, 646 N.E.2d 1218 (1994) (same). We believe that plaintiffs' complaint presents a pure issue of law which necessitates our statutory interpretation and does not require fact finding by the administrative agency or an application of its particular expertise. Accordingly, because plaintiffs' claim falls within established exceptions to the exhaustion doctrine, we find that the plaintiffs were not required to exhaust their administrative remedies prior to proceeding in our state courts. We therefore address the merits of the arguments made on appeal.

Appendix A

Plaintiffs contend that the trial court erred in granting summary judgment in favor of MPEA and against Class B, the class of operators who transport airline passengers from O'Hare and Midway to destinations within Illinois, in light of the express preemption stated in section 14505(2) of the ICCTA, which prohibits state or local taxation of "the transportation of a passenger traveling in interstate commerce by motor carrier." Plaintiffs argue that each time an airline passenger takes a taxi, livery, or bus ride from O'Hare or Midway that was "prearranged" in connection with an immediately preceding interstate flight, that passenger is "traveling in interstate commerce," even if the taxi, bus or livery ride is headed for a destination within the state of Illinois. Therefore, according to plaintiffs, section 14505(2) proscribes the levying of the airport departure tax upon Class B because the constituent prearranged ground segment of the passengers' journeys remains interstate in character even though it occurs solely within the boundaries of Illinois.

In response, MPEA argues that the trial court properly upheld the airport departure tax with respect to Class B because any interstate travel undertaken by the passengers whom Class B transports is not by "motor carrier" designated in section 14505(2) of the ICCTA, but by airplane. Class B's motor carrier ground transportation trips of passengers from O'Hare and Midway to destinations within Illinois, MPEA asserts, are exclusively intrastate. Therefore, section 14505(2), which applies only to taxation of "motor carrier" transportation between two states, is inapplicable to the intrastate ground transportation services provided by Class B. MPEA further argues that there is no language in the ICCTA or any legislative history to support plaintiffs'

contention that prearranged rides constitute an exception to the statute's plain limitation of state taxes on transportation that crosses a state line.

Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 1996); *Allegro*, 172 Ill. 2d at 256. Where the parties have filed cross-motions for summary judgment, they agree that no genuine issue as to any material fact exists and that only a question of law is involved, and they invite the reviewing court to decide the issues based on the record. See *Andrews v. Cramer*, 256 Ill. App. 3d 766, 769, 629 N.E.2d 133 (1993). The standard of appellate review in such a case, as here, is *de novo*. See *Andrews*, 256 Ill. App. 3d at 769.

A brief explanation regarding the history of the ICCTA is warranted here. Congress passed the ICCTA to "abolish the Interstate Commerce Commission, to amend subtitle IV of title 49, United States Code, to reform economic regulation of transportation, and for other purposes." Pub. L. No. 104-88, Preamble. Consistent with its goal of simplifying federal regulation over interstate transportation, Congress delegated many of its regulatory responsibilities to other agencies. Within Part B of the ICCTA, Congress delegated to the Department of Transportation (DOT) regulatory authority over interstate motor carrier transportation. 49 U.S.C. §§13301, 13501 (Supp. II 1997). In Chapter 135, Congress prescribed the limits of federal authority to regulate motor carrier transportation over, *inter alia*, motor carrier

transportation that does not cross a state line (§13501), taxicab service (§13506(a)(2)), and the transportation of passengers that is "incidental to transportation by aircraft" (§13506(a)(8)(A)). Chapter 145 contains provisions delineating between those transportation activities over which the federal government has chosen to assert its authority and those that remain subject to the states' sovereign regulatory powers. Section 14505, upon which plaintiffs rely, states in its entirety:

> "A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
>
> (4) the gross receipts derived from such transportation." 49 U.S.C. §14505 (Supp. II 1997).

The issue confronting this court is the proper construction of section 14505(2) in the context of the ICCTA. The framework for construing a legislative provision, such

as section 14505, is well-established. The primary rule of statutory construction is to ascertain and give effect to the legislature's intent, and that inquiry must begin with the statute's language. See *Van's Material Co., Inc. v. Department of Revenue*, 131 Ill. 2d 196, 202, 545 N.E.2d 695 (1989). Where statutory language is ambiguous, a court may consider other extrinsic aids for construction, including the legislative history and statute's background, *e.g.*, the legislative committee reports. See *Kunkel v. Walton*, 179 Ill. 2d 519, 534, 689 N.E.2d 1047 (1997); *Van's Material*, 131 Ill. 2d at 202. A final cardinal rule of construction, of particular significance in the present case, is that each section of an act subject to two conflicting interpretations should be accorded the interpretation more harmonious with the act's general purpose. In this regard, our supreme court has stated:

> "The policies underlying a statute are often regarded as a valuable source of legislative intent. [Citations.] Examination of the reason and necessity for the law, the evils which the legislature sought to remedy and the purposes intended to be accomplished is [*sic*] particularly important in cases such as this, where the statutory language is not clear. [Citations.] This court will presume that the legislature had a definite purpose in enacting the statute and drafted the statute so that each part would be in harmony with that purpose. [Citations.] From this presumption proceeds the rule that the general purpose of the whole act shall control and that all the parts shall be interpreted consistently with this purpose. If the language of a statute is susceptible to two

> constructions, one of which will carry out its purpose and another which will defeat it, the statute will receive the former construction." *Harvel v. City of Johnston City*, 146 Ill. 2d 277, 283-84, 586 N.E.2d 1217 (1992).

When resolving an issue of statutory construction, a reviewing court conducts a *de novo* review. See *Paris v. Feder*, 179 Ill. 2d 173, 177-78, 688 N.E.2d 137 (1997).

Applying these principles, we find that section 14505(2) is ambiguous because it is susceptible to two equally reasonable and conflicting interpretations. Plaintiffs reasonably interpret the phrase "interstate commerce" embodied in section 14505(2) to mean "continuity of transit," and they argue, therefore, that traveling interstate by airplane makes subsequent intrastate travel by motor carrier, when prearranged, "interstate" travel. Moreover, according to plaintiffs, when passengers travel in interstate commerce, as those whom the Class B plaintiffs service, and have prearranged their ground transportation segment of the trips through ticketing, contract, or reservation, section 14505(2) preempts from local taxation the ground segment of the passengers' journeys, whether in-state or subsequently beyond a state's border. MPEA, on the other hand, reasonably interprets the language embodied in section 14505(2) to mean the prohibition of state and local taxation on the transportation of passengers traveling in interstate commerce, or from one state to another, only by way of "motor carrier." MPEA argues that, "before the prohibition under section 14505(2) can conceivably apply, there must at the very least be trips across a state line by motor carrier, something that

clearly is not present where passengers are transported from Chicago's O'Hare or Midway Airports to destinations within Illinois." Both interpretations are reasonable. Thus, the statutory language is ambiguous and we next consider the legislative history and background of the statute for clarification of the legislature's intent in enacting section 14505(2).

According to the House and Conference Reports, the purpose underlying the enactment of section 14505 was to prohibit "a State or political subdivision of a State from levying a tax on bus tickets for interstate travel." H.R. Rep. No. 104-311, at 120 (1995); H.R. Conf. Rep. No. 104-422, at 220 (1995). An accompanying Senate Report explicitly declares the reason underlying section 14505's enactment and states: "This provision is intended to override a recent court decision [*Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 131 L. Ed. 2d 261, 115 S. Ct. 1331 (1995)] permitting such a tax." S. Rep. No. 104-176, at 48 (1995); see also H.R. Conf. Rep. No. 104-422, at 220 ("This reverses a recent Supreme Court decision [*Jefferson Lines*] permitting states [to levy a tax on bus tickets for interstate travel] and conforms taxation of bus tickets to that of airline tickets").

The Supreme Court in *Jefferson Lines* departed from established precedent in ruling that Oklahoma could, without violating the commerce clause, levy a sales tax on the full price of a ticket for bus travel from Oklahoma to another state. *Jefferson Lines*, 514 U.S. at 200. The precedent from which the *Jefferson Lines* court departed was the Supreme Court's 1948 decision in *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653, 92 L. Ed. 1633, 68 S. Ct. 1260 (1948),

in which the court struck down as unconstitutional an unapportioned state tax imposed by New York on the gross receipts of a company that had sold tickets in New York for interstate bus travel. The *Mealey* court found the state statute fatally flawed because it failed to apportion taxable receipts in the same proportions that miles traveled through the various states bore to the total, thus causing "interstate transportation [to] bear more than 'a fair share of the cost of the local government whose protection it enjoys.' " *Mealey*, 334 U.S. at 663, quoting *Freeman v. Hewit*, 329 U.S. 249, 253, 91 L. Ed. 265, 67 S. Ct. 274 (1946).

The state tax held unconstitutional in *Mealey* was, for all relevant purposes, identical to that at issue in *Jefferson Lines*. Both cases involved taxes imposed upon interstate bus transportation. Oklahoma imposed its tax on the total value of trips of which a large portion may have taken place in other states, and New York, likewise, imposed its tax on the total value of trips of which a large portion took place in other states. Neither state made any effort to apportion the tax to reflect the comparative cost or value of the in-state and out-of-state portions of the trips to avoid taxing that portion of the interstate activity performed in other states. Nevertheless, the court in *Jefferson Lines* refused to follow *Mealey*, and it upheld the New York state tax, finding that it neither imposed an undue burden on interstate commerce nor presented a danger of multiple taxation. *Jefferson Lines*, 514 U.S. at 191. Consequently, by departing from the reasoning stated in *Mealey*, the *Jefferson Lines* court paved the way for states to impose sales taxes not only on the full price of interstate travel tickets but on other transportation services. See Tracy A. Kaye, *Show Me the Money:*

Appendix A

Congressional Limitations on State Tax Sovereignty, 35 Harv. J. on Legis. 149, 166 (1998); Thomas H. McConnell, *Congress Gives Intercity Busing a Free Pass: A Comment on Jefferson Lines v. Oklahoma Tax Commission*, 23 Transp. L. J. 503, 518 (1996).

It was within this jurisprudential background and climate that Congress enacted section 14505 of the ICCTA. This background, coupled with the clear legislative declaration disclosed within the committee and conference reports, reveals a congressional purpose designed to prevent states and their political subdivisions from collecting or levying taxes on bus fares for interstate travel. Accordingly, we find that Congress' exclusive focus in enacting section 14505 was to ensure that the tickets for interstate city-to-city bus trips, trips often passing through multiple states and having minimal contact with the state of their origin, were not taxed by the originating state in a manner disproportionate to the benefits received in that state. Stated another way, the "particular evil" that section 14505 was intended to remedy was a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor.

It follows then that section 14505 does not apply either to intrastate travel or to the type of travel represented by Class B in the present case, a class represented by ground transportation operators who transport passengers, subsequent to those passengers' interstate air travels, from either O'Hare or Midway to destinations within Illinois on a prearranged basis. Accordingly, we hold that the trial court did not err in granting summary judgment against Class B and in favor of MPEA.

Appendix A

We next address the contention raised in MPEA's cross-appeal, which is that the trial court erred in granting summary judgment in favor of Class A based on its determination that section 14505(2) preempted the airport departure tax imposed upon ground transportation operators who transport passengers leaving O'Hare and Midway to surrounding localities in Indiana and Wisconsin. MPEA argues that the language and structure of section 14505, as well as related portions of the ICCTA, demonstrate no congressional intent to preclude states and localities from taxing commercial motor carrier departures from airports to homes, hotels, and businesses in communities served by those airports, even if those communities are located in another state. Rather, according to MPEA, legislative history confirms that Congress intended only to preclude disproportionate state taxes on the sale of interstate bus tickets.

Plaintiffs argue that section 14505(2) prohibits MPEA from imposing the airport departure tax on those ground transportation operators, as represented by Class A, who depart O'Hare and Midway with passengers traveling on ground transportation trips headed for destinations outside Illinois. Plaintiffs maintain that the trial court properly granted summary judgment in favor of Class A because section 14505(2) precludes local taxation of the transportation of passengers who cross state lines by motor carrier.

As discussed above, the legislative history of section 14505 of the ICCTA is clear that Congress intended merely to preclude states from disproportionately taxing *multistate* bus trips, a specific and limited danger not presented by the airport departure tax here when imposed upon those operators

represented by Class B, who provide *intrastate* ground transportation travel. However, the issue presented by MPEA is whether Congress intended section 14505 to preempt state and local taxes upon the type of travel provided by the Class A members, who transport passengers from O'Hare or Midway in buses, taxis, and liveries to destinations outside Illinois.[3]

The preemption doctrine arises from the supremacy clause of the United States Constitution, and it allows federal law to preempt state law. U.S. Const., art. VI. A court's ultimate task, should a preemption issue arise, "is to determine whether State regulation is consistent with the structure and the purpose of the statute taken as a whole." *Davis v. States Drywall & Painting*, 268 Ill. App. 3d 704, 709, 645 N.E.2d 304 (1994). In making this determination, the court must examine the purposes of both the state and federal acts. See *Davis*, 268 Ill. App. 3d at 709. No preemption exists if the goals of the federal and state or local governments are different. See *Western Air Lines, Inc. v. Board of Equalization*, 480 U.S. 123, 130, 94 L. Ed. 2d 112, 107 S. Ct. 1038 (1987) (no preemption existed where the "purpose and effect" of a state's airline property tax did not conflict with the policy embodied in the Federal Aviation Act); see also *LaSalle National Bank v. County of Cook*, 34 Ill. App. 3d 264, 275, 340 N.E.2d 79 (1975) (finding that the goals of the Federal and local governments were different).

A presumption exists in every preemption case that Congress did not intend to supplant state law. *Scholtens v.*

3. MPEA does not argue that the inclusion of taxis and liveries with buses in Class A was improper.

Schneider, 173 Ill. 2d 375, 379, 671 N.E.2d 657 (1996); *Davis*, 268 Ill. App. 3d at 712. This "presumption against federal preemption" applies with special force where "a matter of primary state responsibility," like local taxation, is at stake. *Air Line Pilots Ass'n International v. UAL Corp.*, 874 F.2d 439, 447 (7th Cir. 1989). Thus, no federal preemption exists concerning a state or local tax unless Congress made its intent to preempt "unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460-61, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991); *accord Department of Revenue v. ACF Industries, Inc.*, 510 U.S. 332, 345, 127 L. Ed. 2d 165, 114 S. Ct. 843 (1994); *Michigan v. United States*, 40 F.3d 817, 824 (6th Cir. 1994). This "requirement of a clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision [and is] an acknowledgement that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461, quoting *Will v. Michigan Department of State Police*, 491 U.S. 58, 65, 105 L. Ed. 2d 45, 109 S. Ct. 2304 (1989).

Applying these principles, and placing section 14505(2) in both its statutory and textual context and comparing it against related provisions contained in the ICCTA, we find that Congress, in enacting section 14505, did not intend to preempt the levying of the airport departure tax here even upon the transportation services provided by Class A. First, the policy underlying section 14505 does not conflict with the purpose and effect of the airport departure tax. As discussed above, Congress enacted section 14505 to

ensure that one state might not disproportionately tax the purchase of bus tickets for travel through multiple states. In contrast, the Illinois General Assembly authorized the collection of the airport departure tax to help finance a recent expansion of McCormick Place. The effect created by the Ordinance imposing the airport departure tax is the collecting of a fee upon the departure of motor carrier trips by bus, taxi, or livery from O'Hare or Midway to homes or businesses in Illinois, southern Wisconsin, or northern Indiana. As MPEA points out, these trips are not analogous nor comparable to the type of city-to-city interstate bus trips of the type considered by the Supreme Court in *Mealey* and *Jefferson Lines* and focused upon by Congress when enacting section 14505 — trips where buses rather than aircraft were the means by which passengers engaged in long-distance, state-to-state travel.

Moreover, in enacting section 14505 to countermand the Supreme Court's decision in *Jefferson Lines*, Congress removed the danger that the state in which a cross-country bus trip originated and where the tickets were purchased could disproportionately burden interstate commerce by imposing a sales tax on the entire ticket price, despite the fact that the interstate bus trip had only relatively minor or brief contact with the taxing state. No danger of disproportionate taxation exists in the collection of the airport departure tax in the present case because the taxed commercial motor carriers, as represented by Class B, have their primary contact with and derive the bulk of their benefits from Illinois. See *Allegro*, 172 Ill. 2d at 266-67 (stating that if "every state imposed a tax triggered by departures from airports located within the state, each departure would only

result in tax liability to a single state"); *Goldberg v. Johnson*, 117 Ill. 2d 493, 502, 512 N.E.2d 1262 (1987) (stating that where "no other taxing body can levy the tax being challenged, it is clear that there is no risk of multiple taxation").

Construction of the language of both the federal and state acts involved in the present case leads to a similar conclusion. The language of section 14505(2), prohibiting state taxation of "the *transportation* of passengers traveling in interstate commerce by motor carrier" is inapplicable to the airport *departure* tax, which is imposed not on the *transportation* of passengers in interstate commerce but upon the *departures* of commercial vehicles from O'Hare and Midway. In other words, the "taxable" event to which the airport departure tax attaches is not the interstate transportation of passengers but, rather, the ground transportation departures from the airports.

This construction is compelled when one considers the absence of any "unmistakably clear" expression of congressional intent to preempt the imposition of a state or local tax on commercial motor carrier departures from an airport. And that telling omission is highlighted by the fact that Congress did employ such "unmistakably clear" preemptive language in other sections of the ICCTA. See, e.g., 49 U.S.C. §14501(a) (Supp. II 1997) (clearly and unmistakably forbidding any state or local regulation relating to the scheduling of interstate or intrastate transportation and the rates incurred thereunder); 49 U.S.C. §14502(b)(3) (Supp. II 1997) (clearly and unmistakably forbidding any state or local ad valorem property tax on motor carrier transportation

property at a rate higher than on other commercial and industrial property in the same jurisdictional area). Moreover, this construction is further compelled when one considers that in related provisions contained in the ICCTA, Congress expressly exempted from federal regulation "taxicab service" (49 U.S.C. §13506(a)(2) (Supp. II 1997)) and motor carrier transportation "incidental to transportation by aircraft" (49 U.S.C. §13506(a)(8)(A) (Supp. II 1997)).

Furthermore, we note that section 13506(a)(2) of the ICCTA exempts from federal regulation "a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places." 49 U.S.C. §13506(a)(2) (Supp. II 1997). This exemption is a carryover from the former Interstate Commerce Commission Act (49 U.S.C. §10102) (repealed), which included an identical provision. See 49 U.S.C. §10526(a)(8)(A) (1995) (repealed). Construing that provision, the Supreme Court concluded that Congress had "left the field" of taxicab regulation "largely to the states" because of the recognition that "[t]he operation of taxicabs is a local business." *Buck v. California*, 343 U.S. 99, 100, 102, 96 L. Ed. 775, 72 S. Ct. 502 (1952). Accordingly, the *Buck* court upheld a California ordinance requiring taxi drivers to pay an annual $1 for a driver's permit, even though those taxi drivers were transporting passengers across the international border into Mexico because the "[o]peration of taxicabs across state lines or international boundaries is so closely related to the local situation." *Buck*, 343 U.S. at 102. Congress provided no indication that it intended passage of section 14505 to overturn *Buck*. Accordingly, based on the reasoning in *Buck*, we hold that the "taxicab service"

exemption contained in section 13506(a)(2) of the ICCTA similarly leaves the field open for the levying of the airport departure tax on taxicab and livery departures conducted by the Class A members from O'Hare and Midway to destinations in northern Indiana and southern Wisconsin.

We additionally note that section 13506(a)(8)(A) of the ICCTA exempts from federal regulation the "transportation of passengers by motor vehicle incidental to transportation by aircraft." 49 U.S.C. §13506(a)(8)(A) (Supp. II 1997). In construing the identical exemption in the predecessor statute (see 49 U.S.C. §10526(a)(8)(A) (repealed)), the federal court in *National Bus Traffic Ass'n v. U.S.*, 249 F. Supp. 869 (N.D. Ill. 1965), held that motor carrier trips from airports located in Washington, D.C., and Baltimore, Maryland, to cities in surrounding states were "incidental to transportation by aircraft" and thus outside the scope of federal regulatory authority under the predecessor statute. *National Bus*, 249 F. Supp. at 873. The *National Bus* court viewed the word "incidental" to mean "a minor adjunct to the prime matter, of lesser significance, but related and necessary to the complete effectuation of the matter in chief." *National Bus*, 249 F. Supp. at 873. In upholding application of the exemption to trips from the airports to destinations across the state lines, the *National Bus* court reasoned: "Surely the final phase of the journey on land from the airport where the plane descends to the city where the air trip ends is incidental to the transportation by air." *National Bus*, 249 F. Supp. at 873. The same reasoning applies in the present case. By their very nature, trips provided by Class A from O'Hare and Midway to destinations specified by the passengers beyond the Illinois border are "a minor adjunct," "of lesser significance," and

"the final phase of the passengers' air trips." Thus, such ground transportation trips are " incidental to transportation by aircraft" and are, therefore, beyond the scope of section 14505.

Moreover, as MPEA notes in its appellate brief, Chicago is a major commercial center located in the far northeast corner of Illinois. Its metropolitan area extends into neighboring Wisconsin and Indiana, and O'Hare and Midway serve as the major airports for residents in those areas. The motor carrier trips in question from these airports, whether to Chicago in Illinois, Kenosha in Wisconsin, or Hammond in Indiana, simply enable those residents to reach their final destinations. Congress, by reenacting the "incidental to transportation by aircraft" exemption, plainly intended to remove all such trips from the reach of the ICCTA. This reasoning is buttressed by, with substantial deference given to, regulations issued by the Department of Transportation that expressly exempt all motor carrier departures from O'Hare to northwest Indiana from federal regulatory jurisdiction. See 49 C.F.R. §1047.45(d)(3) (1995).[4]

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4. 49 C.F.R. §1047.45 states that the statutory incidental to air exemption applies to

> "the transportation of passengers who have had or will have an immediately prior or immediately subsequent movement by air."

The scope of this exemption extends to trips within an

> "area encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart

(Cont'd)

In summary, section 14505(2) does not preempt the Ordinance requiring the levying of the airport departure tax upon either Class A or Class B because the text, structure, and history of section 14505, as well as related provisions in the ICCTA, indicate no congressional intent to preempt taxes on motor carrier departures from airports to homes, hotels, and businesses in communities served by those airports, even if those communities are located in another state. We therefore hold that the trial court erred in finding that the levying of the airport departure tax against Class A violates section 14505(2).

For the reasons stated, we affirm the circuit court's order granting summary judgment in favor of MPEA with respect to Class B and we reverse the circuit court's order granting summary judgment in favor of plaintiffs with respect to Class A.

Affirmed in part; reversed in part.

CAHILL, P.J., and WOLFSON, J., concur.

(Cont'd)

> and by the boundaries of the commercial zones * * * of any municipalities any part of whose commercial zones falls within the 25-mile radius of the pertinent airport."

Further, for O'Hare, this area extends to an area reaching to

> "points in Indiana on and north of U.S. Highway 30 and on and west of Indiana Highway 49."

APPENDIX B — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, LAW (TAX) DIVISION DATED AUGUST 12, 1998

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW (TAX) DIVISION

No. 96 L 50112

Hon. John A. Ward

TRI-STATE COACH LINES, INC., *et al.*,

Plaintiffs,

vs.

METROPOLITAN PIER AND EXPOSITION AUTHORITY,
a body politic and municipal corporation,

Defendant.

ORDER

This matter comes before this Court on the cross motions of the parties for summary judgment and related issues. The Court has considered all pleadings and the arguments of the parties and makes the following findings and enters the following orders:

FINDINGS OF FACT

There are no genuine issues of material fact that would prevent this court from ruling on the parties cross-motions

for summary judgment. (735 ILCS 5/2-1005). In fact, all material facts are uncontested.

1. All class representatives are ground transportation operators engaged in the business of transporting passengers for-hire. They transport passengers by motor vehicle from O'Hare and Midway airports and they have been assessed and have paid the Airport Departure Tax that is the subject of this litigation.

2. The class representatives for Class A Plaintiffs transport passengers from the airports to destinations outside Illinois thereby crossing one or more state lines en route.

3. The class representatives for Class B Plaintiffs transport passengers from the airports to destinations within Illinois. The class representatives for Class B(1) Plaintiffs service passengers who have prearranged their ground transportation themselves, or through third party enterprises, as part of their interstate travel plans. The Class B(2) Plaintiffs differ from the Class B(1) Plaintiffs in that their prearrangement is accomplished by their purchase of a single through ticket combining the interstate air carrier service with the ground transportation service from the airport, pursuant to a motor carrier and airline joint master purchase of service agreement.

4. The Court has certified Classes A and B(1) and B(2) and has also ruled that so called "opt-out" notice of this proceeding need not be given to all class members since issues of law predominate, there is no apparent conflict of interest among class members, and the classes are represented by competent and experienced counsel.

Appendix B

5. The Defendant ("**MPEA**") is a political subdivision of local government, a body politic, and a municipal corporation.

6. The Powers of the MPEA are set forth in the Metropolitan Pier and Exposition Authority Act (70 ILCS 210/1 et. seq.) ("**Act**").

7. The Act (Section 13(f), 70 ILCS 210/13(f)) empowers the MPEA to impose by ordinance, an Airport Departure Tax on taxis, livery vehicles, buses and vans carrying passengers for hire from commercial service airports in the Chicago metropolitan area, regardless of destination. Pursuant to that statute, the MPEA enacted an ordinance to collect the Airport Departure Tax from all commercial vehicles departing the airport with passengers for hire, regardless of destination.

8. The MPEA began collecting the Airport Departure Tax on January 1, 1993 and, through its collection agent, the City of Chicago Department of Revenue, continues to make assessments and collections to date.

9. Section 14505 of the ICC Termination Act of 1995 (cite), Pub. L. No. 104-88, enacted December 29, 1995, effective January 1, 1996, provides in its entirety as follows:

> *A State or political subdivision thereof may not collect or levy a tax fee, head charge, or other charges on —*
>
> *(1) a passenger traveling in interstate commerce by motor carrier;*

Appendix B

(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

(3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation.

10. The Court finds that the language of §14505(2) of the ICC Termination Act is clear and unambiguous.

CONCLUSIONS OF LAW

1. Any state statute or local ordinance that imposes a tax on the transportation of a passenger traveling in interstate commerce by motor carrier is preempted and rendered unlawful by §14505 on and after its effective date, January 1, 1996.

2. Only those ground transportation operators who transport passengers to destinations outside Illinois transport passengers who travel in interstate commerce by motor carrier under Section 14505(2) of the ICC Termination Act of 1995. The Court bases its decision on its discussion of the issues and controlling precedent set forth in its Order of May 2, 1997, a copy of which is attached as Exhibit A.

WHEREFORE, for the above and foregoing reasons as well as those expressed in this Court's order of May 2, 1997,

Appendix B

IT IS HEREBY ORDERED THAT:

1. Summary Judgment is granted in favor of the Class A Plaintiffs.

2. Summary Judgment is granted in favor of the Defendant MPEA on Class B(1) and Class B(2).

3. The MPEA shall cease collections of the Airport Departure Tax from Class A plaintiffs and is further ordered to submit a proposed plan to this Court within sixty (60) days concerning the refund of amounts paid to the MPEA by members of Class A on and after January 1, 1996, and any interest that may be owed on such amounts, subject to approval by this Court in accordance with its subsequent order.

4. Paragraph three (3) of this order is stayed for thirty (30) days pending exercise of the parties right to appeal.

5. The Court expressly finds that this order does not resolve all the claims made by the parties and there is no just reason for delaying the appeal of this order pursuant to the provisions of Illinois Supreme Court Rule 304(a).

Enter:

s/ John A. Ward
Hon. John A. Ward, Circuit Judge

APPENDIX C — AGREED ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW (TAX) DIVISION DATED NOVEMBER 17, 1997

Firm No. 52987

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW (TAX) DIVISION

No. 96 L 50112

Hon. John A. Ward

TRI-STATE COACH LINES, INC., *et al.*,

Plaintiffs,

vs.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Defendant.

AGREED ORDER

This matter coming to be heard on Plaintiffs' Amended Motion For Determination That Cause May Be Maintained As A Class Action And For Certification Of Classes Pursuant To Section 2-802 Of The Code Of Civil Procedure, due notice having been provided to all parties entitled, the parties being in agreement, and the court being fully advised in the premises, IT IS HEREBY ORDERED AS FOLLOWS:

Appendix C

1. This cause may proceed as a class action;

2. The court certifies the following as the member classes in this cause:

Class A: All ground transportation operators subject to the Airport Departure Tax who are engaged in the business of providing ground transportation for-hire, to the extent that they are taxed on the act of departing O'Hare or Midway Airports with passengers for-hire for destinations outside Illinois, including, but not limited to, Plaintiffs Tri-State Coach Lines, Inc., Sam Van Galder, Inc., and Advantage Limousine, Inc.

Class B(1): All ground transportation operators subject to the Airport Departure Tax who are engaged in the business of providing ground transportation for-hire, to the extent that they are taxed on the act of departing O'Hare or Midway Airports with passengers for-hire for destinations within Illinois, where the passengers have prearranged their ground transportation as part of interstate and/or foreign travel by air but do not qualify under Class B(2), including, but not limited to, Plaintiffs Tri-State Coach Lines, Inc., and Sam Van Galder, Inc.

Class B(2): All ground transportation operators subject to the Airport Departure Tax who are engaged in the business of providing ground transportation for-hire, to the extent that they are

taxed on the act of departing O'Hare or Midway Airports with passengers for-hire for destinations within Illinois, where the passengers are traveling on a through ticket pursuant to a motor carrier and airline master purchase of service agreement embracing both interstate and/or foreign travel by air and the motor carrier transportation, including, but not limited to. Plaintiffs Tri-State Coach Lines, Inc., and Sam Van Galder, Inc.; and

3. The cause is set for status on Tuesday, December 16, 1997, at 2:00 PM, in room 1407 of the Richard J. Daley Center.

ENTER: NOV 17 1997

s/ John A. Ward
JUDGE JOHN A. WARD

APPENDIX D — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, COUNTY DEPARTMENT, LAW DIVISION, TAX AND MISCELLANEOUS REMEDIES SECTION DATED MAY 2, 1997

**IN THE CIRCUIT COURT OF COOK COUNTY,
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION**

96 L 50112

TRI-STATE COACH LINES, INC., et al.,

Plaintiffs,

vs.

METROPOLITAN PIER AND EXPOSITION AUTHORITY,

Defendant.

ORDER

This matter is before the court on the motion for judgment on the pleadings of the defendant Metropolitan Pier and Exposition Authority ("MPEA"). For the following reasons, the motion for judgment is allowed in part and denied in part.

Background

This court previously denied the plaintiffs' amended motion for a preliminary injunction and, in the order denying

that motion, set forth the following background to this litigation:

> In 1992, the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1, *et seq.*, was amended to authorize the expansion of McCormick Place. As part of the scheme to fund the expansion, the legislature directed the MPEA to impose several new taxes, including taxes on hotels and restaurants in or near downtown Chicago-as well as the Departure Tax at issue here. To this end, Section 13(f) was enacted and provides, in part, that "[b]y ordinance the Authority shall * * * impose an occupation tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation for hire to passengers in the metropolitan area * * *." 70 ILCS 210/13(f) (West 1994). Pursuant to this grant, MPEA enacted by ordinance the Departure Tax in 1993.
>
> In its short life, the Departure Tax has drawn two prior court challenges. In *Allegro v. Metropolitan Pier*, No. 78806 (March 28, 1996), which was brought by some of the same plaintiffs as in this case, the Illinois Supreme Court found that the tax did not violate either the Commerce Clause of the United States Constitution or the Uniformity Clause of our state Constitution. In *Terry v. Metropolitan Pier*, 271 Ill.App.3d 446 (1st Dist., 1995), the Appellate Court rejected similar claims brought by different plaintiffs.

Appendix D

Legal Framework For Motion On The Pleadings

"A motion for judgment on the pleadings is a type of motion 'with respect to pleadings' as provided for by section 2-615 of the Code of Civil Procedure, subsection (e) of which states that '[a]ny party may seasonably move for judgment on the pleadings.' " *Daymon v. Hardin County General Hosp.*, 210 Ill. App. 3d 927, 932 (5th Dist. 1991); *Pioneer Bank & Trust Co. v. Austin Bank of Chicago*, 279 Ill. App. 3d 9, 13 (1st Dist. 1996). "A motion for judgment on the pleadings attacks, as a matter of law, the sufficiency of plaintiff's complaint to state a cause of action." *Foley v. Santa Fe Pacific Corp.*, 267 Ill.App.3d 555, 560 (1st Dist 1994). Thus, ". . . the purpose of a motion for judgment on the pleadings is to test the sufficiency of the pleadings by determining whether the plaintiff is entitled to the relief sought by its complaint . . . ." *Millers' Mutual Insurance v. Graham Oil Co.*, 282 Ill.App.3d 129, 134 (2d Dist. 1996) (citing *Granville National Bank v. Alleman*, 237 Ill.App.3d 890, 894 (1992)).

"The failure of a complaint to state a cause of action is a fundamental defect which may be raised at any time by any means and cannot be waived." *Foley*, 267 Ill.App.3d at 560. "It is a well-settled rule that, when a complaint totally fails to state a cause of action, its insufficiency can be questioned at any time for 'there is a substantial and material difference between alleging a good cause of action in a defective manner and in stating no cause of action.' " *Id.*

"It is well established that, where the court can determine the relative rights of the parties in the subject matter solely from the pleadings, a motion for judgment on the pleadings

is a proper procedure." *Bank & Trust of Arlington Heights v. Arnold N. May Builders, Inc.*, 90 Ill.App.3d 454, 456 (2d Dist. 1980). However, "[j]udgment on the pleadings is proper only if questions of law, and not of fact, exist after the pleadings have been filed." *Millers' Mutual*, 282 Ill.App.3d at 134; *Bulatovic v. Dobritchanin*, 252 Ill.App.3d 122, 127 (1st Dist. 1993). "[I]f the pleadings put in issue one or more material facts, evidence must be taken to resolve such issues, and a judgment may not be entered on the pleadings." *Bank & Trust of Arlington Heights*, 90 Ill.App.3d at 456. "[T]he court is to ascertain whether there is an issue of material fact presented by the pleadings, and if there is no such issue, the question is which party is entitled to judgment." *Pioneer Bank & Trust Co. v. Austin Bank of Chicago*, 279 Ill. App. 3d 9, 13 (1st Dist. 1996); *Daymon*, 210 Ill. App. 3d at 932.

"The only matter to be considered in ruling on such a motion is the allegations of the pleadings." *Pioneer Bank & Trust*, 279 Ill. App. 3d at 13. "A motion for judgment on the pleadings admits the truth of all well pleaded facts in the complaint and challenges only the legal sufficiency of the pleading[s]." *Romano v. Village of Glenview*, 277 Ill.App.3d 406, 409 (1st Dist. 1995); *Bulatovic*, 252 Ill.App.3d at 127. "The question thus presented is whether those pleadings, construed most strongly against the movant, nevertheless show that there is no factual issue which, if determined against the movant, would prevent entry of judgment on behalf of the movant." *Pioneer Bank & Trust*, 279 Ill. App. 3d at 13; *Daymon*, 210 Ill. App. 3d at 932.

"The grant of a motion under section 2-615 is appropriate only where plaintiff's complaint is legally insufficient such

that plaintiff can prove no set of facts that would entitle it to relief." *Abbott Interfast Corp. v. Harkabus*, 250 Ill. App. 3d 13, 16 (2d Dist. 1993). In making its determination, "[the court] must examine all the pleadings on file, taking as true the well-pleaded facts, and reasonable inferences to be drawn therefrom, set forth in the pleadings of the opposing party." *Millers' Mutual*, 282 Ill.App.3d at 134 (citing *Tim Thompson, Inc. v. Village of Hinsdale*, 247 Ill.App.3d 863, 890 (1993)); *see also*, *Foley*, 267 Ill.App.3d at 560; *Burdinie v. Village of Glendale Heights*, 139 Ill.2d 501, 505 (1990). Nevertheless, ". . . a court must disregard all surplusage and conclusory allegations." *Bank & Trust of Arlington Heights*, 90 Ill.App.3d at 456-57.

Discussion

The parties agree that there are no factual issues relating to whether the complaint states a cause of action, only legal issues. As to those legal issues, the respective positions of the parties have been staked out previously in the context of the plaintiffs' amended motion for preliminary injunction. Both parties have broken down the legal issues along the lines of plaintiffs' two proposed classes of those who provide transportation services from the Airports and are assessed under the Departure Tax, proposed Class A and proposed Class B. Proposed Class A consists of those who provide transportation services from the Airports to destinations in Wisconsin and Indiana. Proposed Class B consists of those who provide transportation services from the Airports to destinations within Illinois for passengers who have prearranged these services.

Appendix D

It is the position of the MEPA that the complaint fails to state a cause of action since imposition of the Departure Tax on the proposed classes does not violate §14505(2) of the ICC Termination Act of 1995, 49 U.S.C. §13-1 *et seq*., upon which the amended complaint relies. §14505, which became effective January 1, 1996, provides as follows:

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
>
> (4) the gross receipts derived from such transportation.

As to proposed Class A, the MPEA argues that the court must construe §14505(2) so that the scope of this provision is limited to the same parameters as is the scope of the jurisdiction of the Secretary and Board of the Surface Transportation Board, the successor agency to the ICC. Chapter 135 of the ICC Termination Act is entitled, "Jurisdiction" and this chapter contains several exclusions

from the regulatory jurisdiction of the Secretary and Board which the MPEA urges should be engrafted onto the reach of §14505(2). §14505(2) is not contained within Chapter 135, but rather is part of Chapter 145, entitled "Federal-State Relations." As to proposed Class B, the MPEA argues that the language of §14505(2) clearly and explicitly prohibits local taxation on transportation services only to the extent that such services involve passengers "traveling in interstate commerce by motor carrier." Because those in proposed Class B provide services wholly within Illinois, the MPEA contends that the complaint fails to allege a violation of §14505(2) by imposition of the Departure Tax on those in this class.

The plaintiffs argue that the complaint states a cause of action as to both classes. As to proposed Class A, the plaintiffs argue that the language of §14505(2) is unambiguous and prohibits local taxation on "the transportation of a passenger traveling in interstate commerce by motor carrier." Since the travel provided by those in proposed Class A is between the Airports to destinations outside Illinois, the plaintiffs maintain that the complaint states a cause of action. As to proposed Class B, the plaintiffs maintain that the court must interpret the term "interstate commerce" as used in §14505(2) so as to include the passengers who prearranged their ground transportation services from the Airports. According to plaintiffs, such passengers are traveling in interstate commerce because of the fact that the great majority of them began the air transportation leg of their trips outside of Illinois.

In the court's view, both parties are correct when each argues at various points that the language of §14505(2) is

clear and unambiguous and both parties are wrong when at other points each argues the court must construe this section by reference to other chapters of the ICC Termination Act or case law interpreting the scope of "interstate commerce." The court finds, for present purposes, that the language of §14505(2) is clear and unambiguous and does not require that this court "look beyond the plain language of the federal statute to determine whether a state statute that imposes such a tax is pre-empted." *Aloha Airlines v. Hawaii* (1983), 464 US 7, 12 (Footnote omitted.)

Examining the text of §14505(2), two things of particular significance here are immediately apparent. The first is that this section fails to explicitly incorporate the exclusions to federal jurisdiction contained in Chapter 135. That other sections of Chapter 145 such as §14501(a), §14503, and §14504(b) do incorporate these exclusions heightens the significance of the absence of incorporation in §14505(2). Without the exclusions of Chapter 135 being read into §14505(2), the court concludes that the complaint alleges a cause of action under §14505(2) in regard to proposed Class A, since the transportation provided by that class by motor carrier crosses state lines. The motion for judgment on the pleadings is denied as to proposed Class A.

The second factor of particular significance is that §14505(2) only prohibits the local taxation of those services involving "traveling in interstate commerce by motor carrier." In other words, in order to state a cause of action based on a violation of §14505(2), a party must allege that passengers are transported between states by motor carrier. In regard to proposed Class B, the court concludes that the

complaint fails to state a cause of action for violation of §14505(2) since the transportation services provided by those in this proposed class occur wholly within Illinois. Therefore, the court concludes that the Departure Tax imposed on these services does not violate §14505(2) and the complaint must be dismissed to the extent it alleges a cause of action based on such intrastate transportation by motor carrier.

In ruling on the motion for judgment on the pleadings, the court is mindful that there has not been a hearing on the plaintiffs' motion requesting that this action be maintained as a class action nor on the motion for class certification. While it may be generally the better practice to rule on such motions before considering potentially dispositive motions such as a motion for judgment on the pleadings, such a practice is not required. In *Schlessinger v. Olsen*, 86 Ill.2d 314, 320 (1981), the Supreme Court held that ". . . where a motion to dismiss is made by a defendant, thereby placing in issue the sufficiency of a complaint, a trial court need not delay deciding the motion until the certification question has been resolved." The Court found that such a procedure may be justified because ". . . the time and expense consumed through discovery, litigating the requirements for certification, and notification of class members, may all be avoided by a prompt consideration of a motion to dismiss the complaint." *Schlessinger*, 86 Ill.2d, at 320. In this case, determination of the motion to dismiss prior to the motions to proceed as a class action and for class certification is justified by the economies realized by dismissal of the complaint relative to proposed Class B.

Appendix D

CONCLUSION

For the reasons set forth above, the defendant's motion for judgment on the pleadings is granted as to proposed Class B and is denied as to proposed Class A.

s/ John A. Ward
John A. Ward

Date: May 2, 1997

APPENDIX E — ORDER OF THE CIRCUIT COURT OF COOK COUNTY, COUNTY DEPARTMENT, LAW DIVISION, TAX AND MISCELLANEOUS REMEDIES SECTION DENYING AMENDED MOTION FOR PRELIMINARY INJUNCTION DATED MAY 22, 1996

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

96 L 50112

TRI-STATE COACH LINES, INC., et al.,

Plaintiffs,

vs.

METROPOLITAN PIER AND EXPOSITION AUTHORITY,

Defendant.

ORDER DENYING AMENDED MOTION FOR PRELIMINARY INJUNCTION

This matter is before the court on the plaintiffs' amended motion for a preliminary injunction. In this motion, the plaintiffs seek to restrain the defendant Metropolitan Pier and Exposition Authority ("MPEA") from collecting the Airport Departure Tax based on Section 14505 of the Interstate Commerce Commission Termination Act of 1995. For the reasons set forth below, the motion for a preliminary injunction is denied.

Appendix E

Background

In 1992, the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1, *et seq.*, was amended to authorize the expansion of McCormick Place. As part of the scheme to fund the expansion, the legislature directed the MPEA to impose several new taxes, including taxes on hotels and restaurants in or near downtown Chicago as well as the Departure Tax at issue here. To this end, Section 13(f) was enacted and provides, in part, that "[b]y ordinance the Authority shall * * * impose an occupation tax on all persons, other than a governmental agency, engaged in the business of providing ground transportation for hire to passengers in the metropolitan area * * *." 70 ILCS 210/13(f) (West 1994). Pursuant to this grant, MPEA enacted by ordinance the Departure Tax in 1993.

In its short life, the Departure Tax has drawn two prior court challenges. In *Allegro v. Metropolitan Pier*, No. 78806 (March 28, 1996), which was brought by some of the same plaintiffs as in this case, the Illinois Supreme Court found that the tax did not violate either the Commerce Clause of the United States Constitution or the Uniformity Clause of our state Constitution. In *Terry v. Metropolitan Pier*, 271 Ill.App.3d 446 (1st Dist., 1995), the Appellate Court rejected similar claims brought by different plaintiffs.

Plaintiffs Claimed Basis for Injunctive Relief

Here, the plaintiffs' challenge to the Departure Tax is based not on a constitutional provision, but on a ground not raised in either *Allegro* or *Terry*, namely Section 14505 of

the Interstate Commerce Commission Termination Act of 1995, P.L. 104-88, 109 Stat. 803. That section, which became effective January 1, 1996, provides as follows:

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> > (1) a passenger traveling in interstate commerce by motor carrier;
> >
> > (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
> >
> > (3) the sale of passenger transportation in interstate commerce by motor carrier; or
> >
> > (4) the gross receipts derived from such transportation.

The plaintiffs allege that the clear language of Section 14505(2) protects from local taxation the activities of each proposed class of plaintiffs. Plaintiffs' proposed Class A consists of those who provide for-hire ground transportation for passengers from the Airports to destinations outside of Illinois. Plaintiffs' proposed Class B consists of those who provide for-hire ground transportation from the Airports to destinations within Illinois for passengers who have prearranged their rides. As to both, the plaintiffs maintain that these passengers are travelling in interstate commerce

by motor carrier and accordingly may not be taxed by the MPEA.

Position of MPEA in Opposition to Motion

It is the principle position of the MPEA that Section 14505 was intended to apply, if at all, to a small fraction of the ground transportation services subject to the Departure Tax. The plaintiffs have more specifically framed their contentions in opposition to the amended motion for a preliminary injunction in the form of the four elements necessary for injunctive relief. The MPEA argues that the plaintiffs have failed to show the following: 1) a reasonable likelihood of success on the merits; 2) the absence of an adequate remedy at law and irreparable harm if the relief is not granted; 3) the threatened injury will be immediate, certain, and great if the injunction is denied, while the loss or inconvenience to the defendant is comparatively small and insignificant if granted; and 4) there will be no injurious effect to the general public if the injunction is granted.

Discussion

In the court's view, there is one predominant issue presented and this issue runs through and touches upon each of the four elements which must be proven in order for a preliminary injunction to issue. That issue is, quite simply, the proper construction to be accorded Section 14505. The framework for construing a legislative provision such as Section 14505 is well-formed and has been expressed in the following fashion:

Appendix E

> In strictly construing the similar provisions of the Use Tax Act and the ROTA, the primary rule is to ascertain and give effect to the intention of the legislature, and that inquiry must begin with the language of the statute. (Canteen Corp. v. Department of Revenue (1988), 123 Ill.2d 95, 104, 121 Ill.Dec. 267, 525 N.E.2d 73; Metropolitan Life Insurance Co. v. Washburn (1986), 112 Ill.2d 486, 492, 98 Ill.Dec. 50, 493 N.E.2d 1071.) In addition to considering the language of the statute, a court may properly consider the purposes to be attained by the law, the necessity for the law and the evils sought to be remedied.. (Canteen Corp., 123 Ill.2d at 104, 121 Ill.Dec. 267, 525 N.E.2d 73; Stewart v. Industrial Comm'n (1987), 115 Ill.2d 337, 341, 105 Ill.Dec. 215, 504 N.E.2d 84.) The legislative history or background of a statute (e.g., legislative committee reports as well as House and Senate floor debates) may be an instructive resource in ascertaining the legislative intent. (Chicago Tribune Co. v. Johnson (1985), 106 Ill.2d 63, 69, 87 Ill.Dec. 505, 477 N.E.2d 482.)
>
> *Van's Material Service v. Department of Revenue* (1989), 131 Ill.2d 196, 202-3.

Additionally, in ascertaining the legislative intent, it is proper to consider the circumstances leading up to the enactment of the statutory provision, as well as the language used in the act. *Follett's Book & Supply Store, Inc. v. Isaacs* (1963), 27 Ill.2d 600, 604. A final cardinal rule of

construction which has particular significance here is that each section of an act subject to two conflicting interpretations should be accorded the interpretation which is more harmonious with the general purpose of the act:

> The policies underlying a statute are often regarded as a valuable source of legislative intent. Examination of the reason and necessity for the law, the evils which the legislature sought to remedy and the purposes intended to be accomplished is particularly important in cases such as this, where the statutory language is not clear. This court will presume that the legislature had a definite purpose in enacting the statute and drafted the statute so that each part would be in harmony with that purpose. From this presumption proceeds the rule that the general purpose of the whole act shall control and that all the parts shall be interpreted consistently with this purpose. If the language of a statute is susceptible to two constructions, one of which will carry out its purpose and another which will defeat it, the statute will receive the former construction.

Harvel v. City of Johnston City (1992), 146 Ill. 2d 277, 283-84. (Citations omitted.)

The key to the proper construction to be afforded Section 14505 here centers on the term "travelling in interstate commerce by motor carrier." Section 14505(2), which the plaintiffs rely upon in their motion, prohibits a tax, fee, head charge or other charge on the transportation of a passenger

"travelling in interstate commerce by motor carrier." Both parties contend that this term is clear and unambiguous, but the problem for the court is that the parties suggest entirely different and contrary meanings.

The plaintiffs propose a construction of this term which would give broad application to Section 14505's ban on local taxation for ground services. This construction is premised on the notion that "interstate commerce" was intended by Congress to be given the same meaning as in the context of a constitutional challenge under the Commerce Clause. If "interstate commerce" is understood in this fashion, then Section 14505 would apply not only to those who provide transportation from the Airports to destinations outside Illinois, but also to those who provide transportation from the Airports to destinations within Illinois if such transportation was prearranged. In other words, plaintiffs suggest that Congress intended through Section 14505(2) to prohibit any local tax on the transportation by motor carrier of a passenger travelling between states, even if the actual interstate travel is by air carrier and the only transportation by motor carrier is intrastate travel which is prearranged.

The MPEA argues that this phrase was intended to prohibit local tax on the transportation of a much narrower group of travellers, that is, those who are brought from one state to another by way of mc‘or carrier. Under this construction, "by motor carrier" serves to modify and limit the type of interstate travel which was the concern of Congress. In support of this argument, the MPEA relies on the legislative history to Section 14505 and other provisions in the ICC Termination Act which reflect the intent of

Congress to limit the scope of the act well below its constitutional grant of authority to regulate commerce between the states.

The court agrees with the MPEA that the proper construction of the phrase "travelling in interstate commerce by motor carrier." requires that the transportation between states be accomplished by motor carrier. The proper place to begin construction of this phrase is prior to the decision by the Supreme Court in *Oklahoma Tax Comm'n. v. Jefferson Lines, Inc.*, 115 S.Ct. 1331 (1995). Before *Jefferson Lines*, it was understood that a state or local entity generally could not impose a tax on the transportation of interstate passengers by motor carrier based on the decision in 1948 of the Court in *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653 (1948). In that decision, the Court struck down a New York tax on the interstate transportation of passengers which was assessed as 2% of the gross receipts which were defined as the "receipts received . . . by reason of any sale . . . made" in that state. 334 U.S. at 664. The Court found that this provision violated the Commerce Clause because by "its very nature an unapportioned gross receipts tax makes interstate transportation bear more than 'a fair share of the cost of the local government whose protection it enjoys.' " 334 U.S. at 663 (quoting *Freeman v. Hewit*, 329 U.S. 249, 253 (1946)).

Nearly 50 years after the decision in *Central Greyhound*, the Court decided *Jefferson Lines*. Oklahoma had a sales tax on goods and services which amounted to 4% on the "gross receipts or gross proceeds of each sale" 115 S.Ct. 1347. The respondent Jefferson Lines, Inc. collected and remitted the tax for bus travel within Oklahoma, but did not do so for bus travel from Oklahoma to other states. After Jefferson Lines

filed for bankruptcy protection, Oklahoma claimed the unpaid taxes relating to sales of tickets for interstate travel. First the Bankruptcy Court, then the District Court and finally the Court of Appeals found that the tax, as applied to interstate travel, violated the Commerce Clause. "The Court of Appeals understood its holding to be compelled by" the decision in *Central Greyhound*. 115 S.Ct. at 1335. However, the Supreme Court reversed, finding that the Commerce Clause was not violated by the Oklahoma tax. This result was widely seen as a departure from the holding in Central Greyhound. In his dissent, Justice Breyer expressed this change as follows: "Despite the Court's lucid and thorough discussion of the relevant law, I am unable to join in its conclusion for one simple reason. Like the judges of the Court of Appeals, I believe the tax at issue here and the tax that the Court held unconstitutional in *Central Greyhound Lines, Inc. v. Mealey*, 334 U.S. 653 (1948), are, for all relevant purposes, identical." 115 S.Ct. at 1346.

It was within this climate that Congress took up the business of Section 14505, and the legislative history of this section makes certain that Congress' intent in enacting Section 14505 was to "undo" the result in Jefferson Lines. The Conference Report relative to Section 14505 states:

> Sec. 14505. State tax. This section prohibits a State or political subdivision of a State from levying a tax on bus tickets for interstate travel. This reverses a recent Supreme Court decision permitting States to do so and conforms taxation of bus tickets to that of airline tickets.

Conf.Rep. 104-422, at 220.

Appendix E

There would be no art in statutory construction if there was always legislative history directed so precisely at the issue involved. Section 14505 was intended to remedy a "particular evil," namely, the decision in *Jefferson Lines* allowing local taxation of purely interstate travel by motor carrier. Congress, by legislative enactment, attempted to restore the same balance between interstate commerce and local taxation which had been fixed by constitutional interpretation of the Commerce Clause prior to the decision in *Jefferson Lines*.

Because this history reveals that the exclusive focus of Congress in enacting this section was on motor carrier transportation between the states, it follows that Congress did not intend Section 14505 to apply to intrastate travel, even if such travel was on a prearranged basis and followed an interstate air flight. Therefore, the court finds that Section 14505 has no application to the type of travel represented by proposed Class B, that is, from the Airports to destinations within Illinois on a prearranged basis.

As to the type of travel represented by proposed Class A, travel from the Airports to destinations outside Illinois by motor carrier, analysis of the ICC Termination Act must be carried a further step to determine if Congress intended Section 14505 to apply.

Before *Jefferson Lines*, there was no statutory equivalent to Section 14505 contained in the former ICC Act. Thus, a local entity could impose a tax such as the Destination Tax provided that the tax did not violate the Commerce Clause. *E.g.*, *Allegro v. Metropolitan Pier*, No. 78806 (Ill. S.Ct.,

March 28, 1996). In fact, the former ICC Act contained a provision which specifically exempted from that act "transportation of passengers by motor vehicle incidental to transportation by aircraft." 49 U.S.C. Section 10526(a)(8)(A) (1995). The ICC interpreted this provision to exempt from its jurisdiction ground travel from an airport to a destination within 25 miles of the airport or related "commercial Zone," even if the travel was between states. 49 C.F.R. Section 1047.45(d)(3) (1995). Even beyond this 25 mile area, certain other interstate transportation was regarded as incidental to air travel, including travel between O'Hare and Northern Indiana.

Congress was surely aware of the existing scope of federal regulation when, in enacting the ICC Termination Act, it carried forward numerous provisions from the ICC Act, including the exemption for "transportation of passengers by motor vehicle incidental to transportation by aircraft" contained in Section 13506(a)(8)(A). In the court's view, this *verbatim* enactment of a former provision of the ICC Act reveals a Congressional intent to hold a consistent course relative to local regulation of ground services incidental to interstate air travel.

The court believes that Section 14505 must be construed in a manner consistent with the intent of Congress not to federally regulate ground transportation incidental to airline travel. Stated in the converse, there is nothing to suggest that Congress intended to prohibit by enactment of Section 14505 the local taxation of ground services incidental to air travel which had been allowed under the ICC Act. As a consequence, as to the type of travel represented by proposed

Class A, the application of Section 14505 is limited to the transportation of passengers from the Airports to destinations outside Illinois which is not incidental to air travel.

From the affidavits submitted in support of the motion for a preliminary injunction, the plaintiffs have not shown that the travel from the Airports to destinations outside Illinois was not "incidental to transportation by aircraft." The affiants of 4 of the 5 supporting affidavits merely state that a given percentage of their business consists of transporting passengers "from the Airports to points beyond Illinois." The fifth affiant, John McCoy, stated that his employer, Advantage Limousine, Inc., transported passengers "from O'Hare or Midway airports . . . to locations in Indiana." Consequently, the plaintiff is not entitled to preliminary injunctive relief as to proposed Class A.

CONCLUSION

For the reasons set forth above, the plaintiffs' motion for preliminary injunctive relief is denied.

s/ John A. Ward
John A. Ward

Date: May 22, 1996

APPENDIX F — LETTER OF THE SUPREME COURT OF ILLINOIS DENYING PETITION FOR LEAVE TO APPEAL DATED OCTOBER 4, 2000

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 4, 2000

Mr. James Geis
Attorney at Law
5647 S. Drexel Ave.
Chicago, IL 60637

No. 89989 — Tri-State Coach Lines, Inc., et al., petitioners, v. Metropolitan Pier and Exposition Authority, etc., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 26, 2000.

(2)

Supreme Court, U.S.
FILED
MAR 21 2001
CLERK

No. 00-1240

In the Supreme Court of the United States

TRI-STATE COACH LINES, INC., on behalf of itself and others similarly situated, SAM VAN GALDER, INC., on behalf of itself and others similarly situated, ADVANTAGE LIMOUSINE, INC., on behalf of itself and others similarly situated,

Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District

BRIEF FOR THE RESPONDENT IN OPPOSITION

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Counsel for Respondent

28 pp

QUESTIONS PRESENTED

1. Whether section 14505 of the ICC Termination Act, 49 U.S.C. § 14505, preempts respondent's tax on departures by motor carrier with passengers for hire from Chicago's O'Hare and Midway airports to destinations within Illinois if that transportation is prearranged.

2. Whether section 14505 preempts a tax on departures from Chicago's airports if the passengers are then transported from those airports to local destinations in southern Wisconsin and northwestern Indiana.

RULE 29.6 STATEMENT

The Metropolitan Pier and Exposition Authority ("MPEA") is a political subdivision, unit of local government, body politic, and municipal corporation. 70 ILCS 210/3.

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Introduction. Petitioners seek to invalidate a nominal tax (the "Departure Tax") that is collected from ground transportation operators departing with passengers from Chicago's O'Hare and Midway airports. They argue that section 14505 of the ICC Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, codified at 49 U.S.C. § 14505, preempts and forbids imposition of the Departure Tax on certain operators. However, as this Court's precedents establish, a federal statute does not preempt a state's exercise of its historic powers, such as taxation, absent an unmistakably clear statement from Congress. As the decision below held, there was no such unmistakably clear statement here.

To the contrary, section 14505 does not even address -- much less preempt – taxes like the Departure Tax. As the Illinois Appellate Court explained, the text, structure, and history of the ICCTA demonstrate that Congress had no intention of precluding a tax on commercial motor carriers that carry passengers from metropolitan airports to destinations in the surrounding communities served by those airports. Instead, Congress enacted section 14505 to address a specific and limited danger not presented by the Departure Tax – that one state might disproportionately tax bus transportation through multiple states. The appellate court's unanimous ruling that section 14505 does not preempt the Departure Tax was but a routine application of established principles and raises no issue warranting this Court's review.

Furthermore, there is no conflict among the state or federal courts about the preemptive effect of section 14505. In fact, the decision below is the *only* reported decision to address that provision. Petitioners attempt to manufacture a conflict with this Court's decision in *Aloha Airlines* v. *Director of Taxation*, 464 U.S. 7 (1983). But *Aloha Airlines* addressed a *different* federal statute directed to *different* types of taxes on a *different* industry. *Aloha Airlines* is not even remotely applicable to the issues raised in the petition and thus cannot conflict with the decision below.

STATEMENT OF THE CASE

The Departure Tax. In 1992, the Illinois legislature amended the Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/1 *et seq.*, to authorize a $1 billion expansion of the McCormick Place convention facility. To finance the expansion, the legislation authorized the MPEA, which operates the facilities at McCormick Place, to issue bonds. *Id.* § 210/13.2. To repay the bonds, the legislature directed the MPEA to impose new taxes on businesses that cater to the convention trade and therefore were likely to benefit from an expanded McCormick Place. *Id.* § 210/13. One of those taxes was to be "an occupation tax on all persons * * * engaged in the business of providing ground transportation * * * with passengers for hire from commercial service airports in the metropolitan area." *Id.* § 210/13(f).

In January 1993, the MPEA enacted an ordinance in accordance with section 13(f), which imposed, among other taxes, the so-called "Departure Tax" at issue here. The Departure Tax is levied on departures from Chicago's two commercial airports by three categories of ground transportation providers, as follows (Pet. App. 3a):

> (i) Category 1. For each taxi or livery vehicle departure from a commercial service airport with passengers for hire: $2 per departure.
>
> (ii) Category 2. * * * [F]or each departure from a commercial service airport with passengers for hire: $9 per bus or van with a capacity of 1-12 passengers; $18 per bus or van with a capacity of 13-24 passengers; and $27 per bus or van with a capacity of over 24 passengers.
>
> (iii) Category 3. For each departure from a commercial service airport with passengers for hire in a bus or van operated by a person regulated by the Interstate

Commerce Commission or the Illinois Commerce Commission, and operating scheduled service from the airport, and charging fares on a per passenger basis: $1 per passenger.

Prior Challenges. This is the third time that ground transportation providers have sued to invalidate the Departure Tax. In *Terry* v. *MPEA*, 648 N.E.2d 1047 (Ill. App. 1995), the Illinois Appellate Court rejected uniformity, due process, and equal protection challenges to the tax that were brought by taxicab operators who serve the city of Chicago, emphasizing that vehicle operators "benefit directly" from the expansion project. In *Allegro Services* v. *MPEA*, 665 N.E.2d 1246 (Ill. 1996), the Illinois Supreme Court rejected uniformity, commerce clause, and equal protection claims brought by ground transportation operators who carry passengers from Chicago's airports to surrounding suburban areas in Illinois and to near-by destinations in Wisconsin and Indiana.

The *Allegro* plaintiffs argued that they would not benefit from increased convention traffic at the airports because licensure rules prohibited them from carrying passengers from the airports directly to McCormick Place or downtown hotels. In rejecting their claims, the Illinois Supreme Court explained that the Departure Tax "is a manifestation of legislative policy formed at the State level" that is based on the expectation that "the expanded and improved McCormick Place facilities will lead to a significant increase in tourism to Chicago, thereby boosting certain sectors of the local and regional economy." 665 N.E.2d at 1250, 1257. The Court emphasized that the plaintiffs would benefit from the overall increase in demand for ground transport at the airports and therefore would be among the beneficiaries of the McCormick Place expansion and of the means of financing it. *Id.* at 1254-1255. Noting that the plaintiffs voluntarily availed themselves of the privilege of doing business at the Chicago airports, the court concluded that the Departure Tax is "fairly related to the services provided by

the State," and it upheld the Departure Tax in its entirety. *Id.* at 1257. Petitioners again seek to have the Departure Tax invalidated, now arguing that it is preempted by the ICCTA.

The ICC Termination Act. In the ICCTA, Congress abolished the Interstate Commerce Commission and delegated many of its regulatory responsibilities to other agencies. In Part B of the Act, Congress delegated regulatory authority over interstate motor carrier transportation to the Department of Transportation. 49 U.S.C. §§ 13301, 13501.

Within Part B, Chapter 135 prescribes the limits of federal authority to regulate motor carrier transportation; Chapter 145 concerns "federal-state relations." These provisions differentiate between transportation activities over which the federal government has asserted its authority and others that remain subject to the states' prerogative to tax and regulate inherently local activities. Chapter 135 expressly prohibits federal regulation over, *inter alia*, motor carrier transportation that does not cross a state line (§ 13501), taxicab service (§ 13506(a)(2)), and the transportation of passengers that is "incidental to transportation by aircraft" (§ 13506(a)(8)(A)). Chapter 145, on the other hand, establishes limits on state prerogatives including their ability to impose certain types of taxes on interstate commerce. Section 14505, on which petitioners rely, provides in its entirety:

> "A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on —
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation."

The Trial Court Proceeding. Petitioners operate buses, taxis, and liveries that pick up passengers at the Chicago airports and transport them to local destinations, mostly in Illinois but also in nearby northwestern Indiana and southern Wisconsin. They filed this class action lawsuit in January 1996, claiming that section 14505(2) of the ICCTA preempts and prohibits imposition of the Departure Tax. Pet. App. 4a. Petitioners sued on behalf of two classes of ground transportation providers: (1) Class A, consisting of all commercial ground transport operators that provide passenger transportation from the two Chicago airports to *out-of-state* destinations; and (2) Class B, consisting of operators that provide transportation from the Chicago airports to *in-state* destinations but only to the extent that passengers prearranged that transportation. *Id.* at 5a.

The trial court certified the two classes and granted summary judgment in favor of the plaintiffs with respect to Class A but in favor of the MPEA with respect to Class B. Pet. App. 6a-7a, 36a. The trial court reasoned that taxation of departures from the Chicago airports to Illinois destinations was not prohibited because the passengers do not cross a state line; it concluded that departures to Indiana and Wisconsin could not be taxed because the motor carriers would cross state lines. *Id.* at 33a, 45a-46a.

The Appellate Court Ruling. Petitioners appealed from the trial court's grant of summary judgment in favor of the MPEA with respect to Class B (that is, operators who provide prearranged service *within* Illinois). The MPEA cross-appealed from the court's grant of summary judgment in favor of the Class A plaintiffs (that is, operators who provide service to points *outside* Illinois). The appellate court unanimously held that ICCTA section 14505(2) does not preempt the Departure

Tax with respect to either class. It therefore affirmed the trial court's grant of summary judgment in favor of the MPEA with respect to Class B but reversed the grant of summary judgment in favor of plaintiffs with respect to Class A. Pet. App. 29a.

The appellate court first addressed petitioners' contention that section 14505(2) bars imposition of the Departure Tax on prearranged commercial vehicle departures from the Chicago airports to Illinois destinations. Recognizing that it must "give effect to the legislature's intent," beginning with "the statute's language," the court found that the text of section 14505(2) does not clearly indicate that it applies to prearranged ground transportation trips from an airport located in Illinois to an Illinois destination. Pet. App. 16a-17a. The court concluded that a tax levied on such a purely in-state motor carrier trip is not a tax on "the transportation of a passenger traveling in interstate commerce by motor carrier." *Id.* at 20a.

The court looked to the legislative history to help clarify Congressional intent. Pet. App. 18a. It noted that the House and Conference Reports state that the purpose of section 14505 is to prohibit "a State or political subdivision of a State from levying a tax on bus tickets for interstate travel." *Ibid.* (quoting H.R. Rep. No. 104-311, at 120 (1995); H.R. Conf. Rep. No. 104-422, at 220 (1995)). The court also looked to the Senate Report, which states that section 14505 was "intended to override" this Court's decision "permitting such a tax" in *Oklahoma Tax Commission* v. *Jefferson Lines, Inc.*, 514 U.S. 175 (1995). *Ibid.* After analyzing *Oklahoma Tax Commission* and its background, the court concluded that the limited purpose of section 14505 was to prohibit "a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor." *Id.* at 20a. Finding that the Departure Tax did not implicate that purpose, the court held that section 14505 does not bar imposition of the Departure Tax on departures from the airports to Illinois destinations, and it therefore affirmed the

trial court's grant of summary judgment to the MPEA with respect to Class B. *Ibid.*

The court then turned to the MPEA's contention that the trial court erred in ruling that section 14505 bars imposition of the Departure Tax on commercial vehicle departures from the Chicago airports to surrounding localities in Indiana and Wisconsin. Reviewing this Court's preemption cases, the court explained that there can be no preemption "if the goals of the federal and state or local governments are different," and that a state or local tax is not preempted "unless Congress made its intent to preempt 'unmistakably clear in the language of the statute.'" Pet. App. 22a-23a (quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-461 (1991)). Applying those principles, and placing section 14505 "in both its statutory and textual context and comparing it against related provisions contained in the ICCTA," the court held that the ICCTA does not preempt the Departure Tax merely because passengers are transported from the Chicago airports across the nearby Wisconsin and Indiana state lines. *Id.* at 23a.

Analyzing the statutory text, the court determined that "the 'taxable' event to which the airport departure tax attaches is not the interstate transportation of passengers but, rather, the ground transportation departures from the airports." Pet. App. 25a. Analyzing the statutory structure, the court noted that section 13506(a)(2) of the ICCTA exempts taxicab service from federal regulation and that, based on the same exemption in the ICCTA's predecessor statute, this Court had upheld a state fee on taxi operators carrying passengers across state lines. *Id.* at 26a (citing *Buck* v. *California*, 343 U.S. 99 (1952)). In addition, the court noted that section 13506(a)(8)(A) of the ICCTA exempts "transportation of passengers by motor vehicle incidental to transportation by aircraft" from federal regulation and that federal courts had found that exemption applicable to commercial motor carrier trips from airports to local destinations across state lines. Accordingly, the court reasoned,

ground transportation trips from the Chicago airports, even if they cross the Indiana or Wisconsin border, "are 'incidental to transportation by aircraft' and are, therefore, beyond the scope of section 14505." Pet. App. 27a-28a.

Finally, after reviewing the legislative history and statutory purpose of the ICCTA, the court concluded that the Departure Tax does "not disproportionately tax the purchase of bus tickets for travel through multiple states," and there is "[n]o danger of disproportionate taxation" because the taxed motor carriers "have their primary contact with and derive the bulk of their benefits from Illinois." Pet. App. 24a.

The appellate court therefore reversed the trial court's grant of summary judgment in favor of Class A "because the text, structure, and history of section 14505, as well as related provisions in the ICCTA, indicate no congressional intent to preempt taxes on motor carrier departures from airports to homes, hotels, and businesses in communities served by those airports, even if those communities are located in another state." Pet. App. 29a. The Illinois Supreme Court subsequently denied petitioners' request for review. 738 N.E.2d 936 (2000).

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT CONFLICT WITH A DECISION OF THIS OR ANY OTHER COURT.

The decision below is the only reported case addressing section 14505 of the ICCTA. Accordingly, there is no conflict among the state or federal courts about its preemptive effect for this Court to resolve. Petitioners make a strained contention that the appellate court's decision conflicts with decisions in other cases that do not address section 14505 of the ICCTA. But those decisions are not even remotely in conflict with the decision below. Some of the decisions cited by petitioners (at 18) construe *different* statutory provisions which, unlike

section 14505, are expressly preemptive of the state laws at issue.[1/] The other cases cited by petitioners (at 20-21) do not address preemption at all but rather the constitutional meaning of "interstate commerce" for purposes of the dormant Commerce Clause, a question not at issue here. See *infra* part II.

Petitioners' primary argument is that the decision below conflicts with this Court's decision in *Aloha Airlines*. See Pet. 10-12. But the two decisions do not conflict; they address neither the same statute nor the same subject matter. *Aloha Airlines* held that section 1513(a) of the Airport Development Acceleration Act of 1973 ("ADAA") (now codified at 49 U.S.C. § 40116), which prohibits state taxes "on the sale of air transportation or on the gross receipts derived therefrom," expressly preempted a Hawaii tax on the gross receipts of the respondent airlines. This Court explained that by its plain text the ADAA "unambiguously" prohibits "a particular kind of tax," namely, a gross receipts tax of the very type imposed by Hawaii. 464 U.S. at 12. In this case, to the contrary, the statutory provision on which petitioners rely does not unambiguously prohibit – *or even mention* – the "particular kind of tax' challenged by petitioners, namely, a tax on commercial motor vehicle departures from airports. Thus, this case does not raise the express preemption issue addressed in *Aloha Airlines*.

This case also concerns a completely different type of tax from the gross receipts tax at issue in *Aloha Airlines*. The Departure Tax is not levied on petitioners' gross receipts but only on their departures with passengers from the Chicago airports regardless of their ultimate distination. Petitioners

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[1/] The cases petitioners cite involve statutory provisions that expressly prohibit certain types of state regulation of intrastate towing and charter bus operations.

apparently contend that *other* kinds of taxes proscribed by section 1513 of the ADAA – on "persons traveling in air commerce" and on "the carriage of persons traveling in air commerce" – are analogous to the taxes proscribed by section 14505 of the ICCTA and to the Departure Tax. Pet. 10-12. But this Court did not address those kinds of taxes in *Aloha Airlines*, limiting its discussion to the statutory ban on the kind of gross receipts tax imposed by Hawaii. *Aloha Airlines* says nothing about how these other proscriptions in the ADAA should be interpreted and thus cannot possibly be in conflict with the decision in this case.

Moreover, the thrust of Hawaii's position in *Aloha Airlines* was that the ADAA prohibits the imposition of state taxes only on air passengers, not on air carriers, and that Hawaii's tax was really a property tax (which was expressly permitted by the ADAA) rather than a gross receipts tax. 464 U.S. at 13-14. Those issues, too, are not present in this case. Indeed, if there is any similarity between the two cases, it is that petitioners here, like Hawaii in *Aloha Airlines*, seek to avoid the plain meaning of the statutory text.

Aloha Airlines is off point for an additional reason, one that highlights petitioners' flawed attempt to stretch the ICCTA language to reach local taxes on pre-booked local ground transportation departures from airports. The ADAA provisions apply only to "air commerce," which the ADAA broadly defines as "the operation of aircraft that directly *affects* * * * foreign or interstate air commerce." 49 U.S.C. § 40102(a)(3) (emphasis added). That language plainly authorizes a far broader federal regulatory reach than section 14505 of the ICCTA, which applies only to the transportation of a passenger traveling "*in* interstate commerce by motor carrier" (emphasis added). As this Court has emphasized, the statutory phrase "in interstate commerce" expresses Congress' intent to make the scope of a statute narrower than when it uses such terms as "affecting," "involving," or "related to" interstate commerce.

See, *e.g.*, *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 273 (1995); *Russell* v. *United States*, 471 U.S. 858, 859 n.4 (1985); see also *United States* v. *Gillies*, 851 F.2d 492, 494 (1st Cir. 1988). The broader reach of the ADAA provision reflects the fact that there is nothing inherently local about air travel, in contrast to motor carrier travel between airports and destinations located in the metropolitan area.

Finally, petitioners fail to mention that the ADAA does *not* prohibit either state taxes on flights that take off or land in the state (see 49 U.S.C. § 40116(c)) or reasonable landing fees (*id.* § 40116(e)(2)). Those are taxes and fees that, like the Departure Tax, reasonably reflect a fair approximation of benefits gained from the use of airport facilities. In *Northwest Airlines, Inc.* v. *County of Kent*, 510 U.S. 355, 366 (1994), this Court rejected a challenge to airport user fees and held that they did not violate the ADAA. The appellate court's decision in this case is consistent with *Northwest Airlines*, and it does not conflict with *Aloha Airlines*, which was directed to a different statute, a different type of tax, and wholly different issues.[2/]

II. THE DECISION BELOW WAS A ROUTINE APPLICATION OF FEDERAL PREEMPTION PRINCIPLES.

Petitioners offer no reason to think that this case raises an important issue warranting this Court's review. The most they can come up with is that other "local authorities *may* rely on

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[2/] The lack of any conflict between the decision below and *Aloha Airlines* is further underscored by subsequent decisions rejecting claims that the ADAA preempts Hawaii taxes on the *ground* transportation portion of the receipts of air freight carriers. See *Kamikawa* v. *United Parcel Serv., Inc.*, 966 P.2d 648, 652 (Haw. 1998); *Kamikawa* v. *Lynden Air Freight, Inc.*, 968 P.2d 653, 656 (Haw. 1998), cert. denied, 526 U.S. 1087 (1999).

this Illinois decision" to impose taxes on departures from other airports and that "the door will be opened" for other types of taxes on "other industries." Pet. 22 (emphasis added). Such speculation is a far cry from the "compelling reasons" that Rule 10 requires for granting a petition for certiorari. The appellate court appropriately applied well-established principles to the facts of this case. Petitioners offer no reason to re-work well plowed ground.

One such principle is that a federal statute does not preempt the exercise of one of the "historic powers of the States" unless Congress made its intent to preempt "unmistakably clear in the language of the statute." *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-461 (1991); accord *Department of Revenue* v. *ACF Indus., Inc.*, 510 U.S. 332, 345 (1994). Thus, any federal preemption of a state tax requires a plain statement from Congress that such was its intent. *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997). This presumption against federal preemption of state taxes derives from "[p]rinciples of federalism" and the fact that "the taxation authority of state government" is "central to state sovereignty." *ACF Indus.*, 510 U.S. at 345. Petitioners have not rebutted that presumption by showing that Congress clearly and unmistakably intended section 14505(2) of the ICCTA to preempt a tax on commercial motor vehicle departures from airports to surrounding communities.

A. The ICCTA Does Not Plainly Forbid A Tax On Departures From The Chicago Airports To Destinations In Illinois.

Section 14505(2) does not "clearly and unmistakably" ban taxes on motor vehicle departures from airports to destinations within the same state, as petitioners contend. To the contrary, it applies by its terms only to taxes on the "transportation of a passenger traveling *in interstate commerce by motor carrier*" (emphasis added). That language does not purport to

encompass purely *intra*state trips to destinations within Illinois. Even if a passenger being carried to an Illinois destination had just arrived from an interstate flight, that *inter*state travel was *by airplane*, not "by motor carrier," and therefore not addressed by section 14505(2).

Unable to overcome this plain text, petitioners argue that prearranging *intra*state motor carrier trips somehow transforms them into *inter*state trips "by motor carrier." But many passengers who prearrange their airport departure transportation do so before they leave Illinois, in which case there is not even an interstate phone call or fax on which plaintiffs can rely. In any event, this argument cannot be reconciled with the statutory text, which says nothing about prearrangements. Petitioners cite a body of irrelevant case law construing the scope of "interstate commerce" for purposes of determining whether state regulation impermissibly burdens commerce in violation of the dormant Commerce Clause. See Pet. 20-21.[3/] But this case has nothing to do with the reach of

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[3/] See *Executive Town & Country Servs., Inc.* v. *City of Atlanta*, 789 F.2d 1523, 1527 (11th Cir. 1986) (city's minimum fare regulations for limousine service did not unconstitutionally burden interstate commerce); *Charter Limousine, Inc.* v. *Dade County Bd. of County Comm'rs*, 678 F.2d 586, 589 (5th Cir. 1982) (city's exclusive franchise to limousine service did unconstitutionally burden interstate commerce); *Southerland* v. *St. Croix Taxicab Ass'n*, 315 F.2d 364, 369 (3d Cir. 1963) (forcing air passengers to abandon prepaid local transportation in favor of local taxicab operator unconstitutionally burdened interstate commerce). One of petitioners' cases does address the statutory meaning of "interstate commerce" in the Fair Labor Standards Act. See *Airlines Transp., Inc.* v. *Tobin*, 198 F.2d 249 (4th Cir. 1952). But in that case, unlike here, the ground transportation was contractually controlled by the airlines and so not inherently local. See *id.* at 250.

the dormant Commerce Clause or any claimed burden on interstate commerce. In fact, the Illinois Supreme Court in *Allegro* squarely (and preclusively) rejected petitioners' argument, based on that same line of cases, that the Departure Tax unreasonably burdens or discriminates against interstate commerce. *Allegro*, 665 N.E.2d at 1256-57.

As the court below explained, the relevant issue here is not the scope of the dormant Commerce Clause but rather the meaning of the statutory phrase "traveling in interstate commerce by motor carrier" in section 14505(2) of the ICCTA. Petitioners have not cited any cases suggesting that a purely intrastate trip by motor carrier can somehow be deemed "traveling in interstate commerce by motor carrier." Indeed, the case law supports the conclusion that this language was *not* intended to include a purely intrastate trip. In *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 230-231, 233 (1947), for example, this Court held that taxicab trips from Chicago railroad stations to homes, offices, and hotels in the Chicago area are too "casual and incidental" to constitute "interstate commerce" "within the meaning of the Sherman Act" because such service "is not an integral part of interstate transportation." Other federal courts have reached the same conclusion in cases raising similar issues. *E.g.*, *Evanston Cab Co.* v. *City of Chicago*, 325 F.2d 907, 912 (7th Cir. 1963) (a taxicab ride from O'Hare Airport to an outlying Chicago suburb is but "a local ride in a local taxicab" and not in interstate commerce for purposes of the Sherman Act); *Mateo* v. *Auto Rental Co.*, 240 F.2d 831, 835 (9th Cir. 1957) (prearranged limousine transportation from metropolitan airport was not "in commerce" for purposes of the Fair Labor Standards Act but rather was "activity of a purely local nature"). The appellate court's decision that riding from an Illinois airport to an Illinois destination is not "traveling in interstate commerce by motor carrier" was both true to the statutory text and entirely consistent with this well established body of law.

Furthermore, administering petitioners' proposed distinction between "prearranged" and other ground vehicle departures from airports to in-state destinations would be all but impossible. Given the multitudes of passengers exiting Chicago's airports, distinguishing between those who called ahead to arrange their rides from those who did not would present enormous difficulties. Congress cannot possibly have intended that Section 14505 would give rise to such an administrative quagmire. See *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible").

B. The ICCTA Does Not Plainly Forbid A Tax On Departures From The Chicago Airports To Destinations In Indiana And Wisconsin.

Section 14505(2) does not "clearly and unmistakably" forbid a tax on motor carrier departures from an airport whenever the ultimate destination is a surrounding community across a state line. The Departure Tax is not comparable to the type of taxes banned by section 14505. It is not imposed on "the *transportation* of a passenger traveling in interstate commerce by motor carrier" but rather on passenger *departures* from the Chicago airports. Thus, the tax is not correlated to the amount of transportation (*i.e.*, to the distance traveled). It applies even if the departing passengers, such as airport employees or meeting attendees, did not travel in interstate commerce at all. Moreover, the tax applies to *all* departures by commercial ground transportation from the airports, regardless of how near or how far the ultimate destination may be.

In other words, the Departure Tax does not tax the transportation of passengers in interstate commerce but rather the benefits that commercial carriers derive from their use of the airport, similar to the tolls that states routinely impose for use of a tollway or bridge. Petitioners earn revenues from the

passengers that McCormick Place attracts to the airports, they are taxed a nominal sum for their use of the airports upon departure, and those taxes are used to finance the McCormick Place expansion. See *Western Air Lines, Inc.* v. *Board of Equalization*, 480 U.S. 123, 132 (1987) (no preemption by federal statute designed to prevent discriminatory taxation where "the specter of discriminatory burdens on the carrier is avoided by the recycling of the tax revenues into the specific facilities used by the carrier"). Seeking the proverbial free lunch, petitioners want to enjoy those benefits but not pay the roughly one dollar per passenger Departure Tax to help defray the costs of expanding the very facilities that attract so many passengers to the airports.

Significantly, Congress *did* employ unmistakably clear preemptive language in other sections of the ICCTA. For example, section 14501(a)(1)(C) clearly and unmistakably forbids any state or local government from enacting laws relating to "the authority to provide intrastate or interstate charter bus transportation," and section 14502(b)(3) clearly and unmistakably forbids any state or local ad valorem property tax on motor carrier transportation property at a rate higher than on other commercial and industrial property in the same area. If Congress had adopted similar language in Section 14505 — such as "no state or subdivision thereof may collect or levy a tax on commercial motor carrier departures from airports" — this would be a very different case. But Congress did not do so, and petitioners' attempt to re-write the statute to fit their purposes cannot turn a routine application of established principles into a certworthy case.

In addition, reading section 14505 in its statutory context demonstrates that Congress did not intend to prohibit taxes like the Departure Tax, even when passengers are transported to destinations across a state line. The motor carrier provisions of the ICCTA leave the states free to regulate and tax motor

carrier transportation of an inherently local character.[4] In particular, the ICCTA exempts from federal regulatory authority all motor carrier transportation that is "incidental to transportation by aircraft" (§ 13506(a)(8)(A)) or that provides "taxicab service" (§ 13506(a)(2)). See *National Bus Traffic Ass'n* v. *United States*, 249 F. Supp. 869 (N.D. Ill. 1965) (motor vehicle trips from Washington, D.C. airport across Maryland state line are "incidental to transportation by aircraft" and thus exempt from federal regulation), aff'd per curiam, 382 U.S. 369 (1966); *Buck* v. *California*, 343 U.S. 99, 100, 102 (1952) (upholding California permit fee on taxis transporting passengers across Mexican border because "[t]he operation of taxicabs is a local business" and Congress "left the field" of taxicab regulation "largely to the states"); *Yellow Cab Co.* v. *Cab Employers*, 457 F.2d 1032 (9th Cir. 1972) (taxi transportation of passengers between Nevada airport and California was not "in interstate commerce" for purposes of the Sherman Act). It makes no sense to assume that Congress explicityly preserved state regulation of motor carrier trips from airports to surrounding communities, yet intended to preempt any state taxation of the very same airport-related businesses.[5]

---

[4] See *Wardair Canada, Inc.* v. *Florida Dep't of Revenue*, 477 U.S. 1, 7 (1986) (rejecting contention that Federal Aviation Act preempted state tax on sale of aviation fuel and recognizing that the power to tax is coextensive with the power to regulate).

[5] Petitioners contend (at 16-17) that these statutory exclusions have no bearing on whether section 14505 preempts the Departure Tax. They rely on a district court case, *Greyhound Lines, Inc.* v. *City of New Orleans*, 29 F. Supp. 2d 339 (E.D. La. 1998). In *Greyhound Lines*, the court held that ICCTA § 14501(a), a provision that expressly forbids states or localities from enacting laws or regulations relating to "the authority to provide *intrastate or interstate* charter bus transportation," preempted a city permit requirement for

Furthermore, the legislative history answers any doubts about the limited scope of section 14505. Congress sought to address a particular danger, raised by a recent decision of this Court, that one state might disproportionately tax bus transportation through multiple states. See *supra*, p. 6. The Departure Tax raises no such danger, because, as the Illinois Supreme Court held in *Allegro*, it is reasonably related to services provided in Illinois and applies only to departures from the Chicago airports to surrounding localities. 665 N.E.2d at 1258-1259. Petitioners obtain their passengers by taking advantage of the services and economic opportunity provided to them by Illinois and its airports (as well as by McCormick Place). That opportunity to pick up passengers at Chicago's major international airports is at the heart of petitioners' business activity and is the focus of the Departure Tax. See *Goldberg* v. *Sweet*, 488 U.S. 252, 261-263 (1989) (rejecting argument that Illinois tax on interstate calls originating in Illinois created a risk of multiple taxation, because no other state could reasonably impose an identical tax). Thus, the Departure Tax does not present the type of problem that Congress sought to remedy through section 14505, and the appellate court properly rejected petitioners' argument that it does.[6/]

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intrastate charter bus drivers. (Emphasis added.) That holding plainly does not speak to the question at issue here, involving a statutory provision that does not contain any such expressly preemptive language.

[6/] Petitioners argue (at 16) that so limiting the meaning of section 14505 would make subparagraphs (1) and (2) superfluous. But one need only read all four subsections to see that Congress designed them to work together to prevent states from taxing the busness of transporting passengers in interstate commerce. The four subsections together make clear that such taxes are forbidden no matter whether they are directed to the

In short, Congress intended only a limited strike against a very specific problem, not a broad assault on state use taxes like the Departure Tax. Petitioners may prefer not to be taxed for the benefits they receive from the increase in their business created by the McCormick Place expansion, but any redress must come from the Illinois legislature, not from the courts. That reasoned conclusion of the Illinois Appellate Court is fully consistent with this Court's precedents and raises no issue appropriate for this Court's review.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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"passenger," the "transportation," the "sale," or the "gross receipts" of an interstate motor carrier. None is superfluous, and none purports to prohibit taxation related to the use of airports.

(3)

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IN THE
Supreme Court of the United States

TRI-STATE COACH LINES, *et al.*,
Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY,
Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

BRIEF OF THE AMERICAN BUS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District

BRIEF OF THE AMERICAN BUS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Pursuant to Rule 37 of the Rules of this Court, the American Bus Association, Inc. ("ABA") respectfully submits this brief as amicus curiae in support of the petition for a writ of certiorari, which seeks this Court's review of a decision that would largely nullify the protections of a federal statute of the greatest importance to the intercity bus industry. Letters indicating the consent of the parties to the filing of this brief have been filed with the Clerk of the Court.[1]

[1] No part of this brief was authored by counsel for any party to this case and no person or entity other than ABA made any monetary contribution to the preparation and submission of this brief. *See* Rule 37.6 of the Rules of the Supreme Court.

INTEREST OF THE *AMICUS CURIAE*

ABA is the principal national trade association for the intercity bus industry. ABA's members include more than 800 bus companies, all of whom are engaged in the interstate transportation of passengers by motor vehicle. ABA's members operate more than 20,000 buses, in both charter and scheduled service, and they provide more than 90 percent of intercity bus transportation in the United States. Many of ABA's members also provide shuttle services to and from airports and railroad stations.

The bus industry is by some measures the largest commercial transporter of passengers in the United States. A recent survey estimates that intercity motorcoaches, which do not include local transit buses or school buses, transported more than 774 million passenger-trips in the United States in 1999.[2] Also, as airline deregulation over the last two decades has reduced air travel to many communities, intermodal transportation—*i.e.*, trips by bus and air or by bus and train—has played an increasingly vital role in transporting passengers in interstate and international travel.

The issue in this case is of vital importance to ABA's members and the people who ride their buses. The court below held that a tax imposed by respondent Metropolitan

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[2] "Motorcoach 2000 Census" by R.L. Banks & Associates (July 2000) at 2, 10. This figure is for all trips by "motorcoach," defined as "a vehicle designed for long distance transportation of passengers, characterized by integral construction with an elevated passenger deck located over a baggage compartment . . . at least 35 feet in length and carries more than 30 passengers." The figure includes commuter and charter trips by commercial motorcoach but does not include trips in transit buses or school buses. By comparison, commercial airlines in the United States carried only 568 million passenger trips in 1999, and Amtrak carried only 377 million. These figures and other facts about the bus industry are set forth in the "Industry Profile and Safety" site on ABA's website, www.buses.org.

Pier and Extension Authority ("MPEA") on the motor vehicle transportation of passengers for hire from Chicago's O'Hare and Midway airports does not violate 49 U.S.C. § 14505 even when the motor vehicle trips are to out-of-state destinations or are part of a prearranged, continuous air-surface interstate trip. 49 U.S.C. § 14505 expressly prohibits states and subdivisions of states from imposing any "tax, fee, head charge, or other charge" on, among other things, "the transportation of a passenger traveling in interstate commerce by motor carrier." This provision was enacted by Congress in 1995 at the urging and with the strong support of ABA specifically to protect motor carriers of interstate passengers from just such exactions as the MPEA tax involved in this case. The conclusion of the Illinois Appellate Court that § 14505 does not bar the application of the MPEA tax to what ABA submits is clearly interstate motor carrier transportation would largely eviscerate the protections § 14505 was enacted to provide. That result would have the gravest consequences for the nation's commercial bus operators, who have been struggling for decades to maintain ridership in the face of thin margins and intense competition from other transportation modes. ABA and its members have a vital interest in ensuring that § 14505 is construed and applied as Congress intended.

STATEMENT OF THE CASE

The facts are set forth more fully in the Petition. We confine our discussion of them here to what ABA submits are the most significant features of the MPEA tax at issue and of the decision below.

The MPEA's "Airport Departure Tax Ordinance" is not imposed on all persons departing O'Hare and Midway airports. Instead, by its terms and in accordance with the

authorizing statute,[3] it is imposed only on "persons, other than a governmental agency, engaged in the business of providing ground transportation to passengers for-hire," and only when such persons depart the airport with paying passengers. The rate of the tax increases with the capacity of the vehicle, except that if the carrier is providing scheduled service regulated by the Interstate Commerce Commission [4] or the Illinois Commerce Commission, the tax is $1 per passenger.

Petitioners challenged the validity of the tax under 49 U.S.C. § 14505 on behalf of two subclasses of motor carriers: Class A are those who are taxed "on the act of departing O'Hare and Midway Airports with passengers for-hire for destinations outside Illinois"; Class B are those who are taxed "on the act of departing O'Hare and Midway Airports with passengers for-hire for destinations within Illinois, where the passengers have prearranged their ground transportation as part of interstate and/or foreign travel by air . . . [or] are traveling on a through ticket pursuant to a motor carrier and airline master purchase of service agreement embracing both interstate and/or foreign travel by air and motor carrier transportation." Pet App. 36a-37a.

The Circuit Court of Cook County held the MPEA tax invalid under 49 U.S.C. § 14505 as to Class A but not as to Class B. Pet. App. 30a-34a. The Illinois Appellate Court held that MPEA tax valid as to both classes. *Id.* at 1a-29a. It is important to identify the grounds for the Appellate Court's

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[3] Illinois Metropolitan Pier and Exposition Authority Act, 70 ILCS 210/13(f) (West 1994), reproduced at Pet. 4-5.

[4] The Interstate Commerce Commission was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) ("ICCTA"), and most of its remaining regulatory functions relating to motor carriers were transferred to the United States Department of Transportation.

ruling as to each class. Although masked by a good deal of verbiage, the grounds are apparent on close examination.

The court addressed Class B first, and it identified the issue as whether motor carriage within Illinois as part of a prearranged interstate or international trip by air and motor carrier constituted "the transportation of a passenger traveling in interstate commerce by motor carrier" within the meaning of § 14505 (2). Pet. App. 15a-17a. As to that issue, the court found the language of § 14505 (2) ambiguous, thus permitting resort to the legislative history of the statute. *Id.* at 18a. Citing congressional committee reports, the court concluded that the purpose of the statute was to overrule this Court's decision in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175 (1995). Because this Court in *Jefferson Lines* held that an Oklahoma sales tax on the full price of a ticket for an interstate trip did not violate the Commerce Clause, the Illinois Appellate court concluded that

> Congress' *exclusive* focus in enacting section 14505 was to ensure that the tickets for interstate city-to-city bus trips, trips often passing through multiple states and having minimal contact with the state of their origin, were not taxed by the originating state in a manner disproportionate to the benefits received in that state. Stated another way, the "particular evil" that section 14505 was intended to remedy was a state's imposition of a sales tax upon the whole price of an interstate bus ticket where the contact of the interstate bus trip with the taxing state was minor.

Id. at 20a (emphasis added). Based on this view of the exclusive purpose of § 14505, the court concluded that the statute did not apply to "the type of travel represented by Class B in the present case," *i.e.*, where the motor transportation was entirely within one state, even if it was part of a prearranged interstate trip. *Id.*

The court then addressed Class A and also upheld the MPEA tax even as applied to trips where the motor carriage itself crossed state lines. It based this ruling, first, on its earlier stated view of the purpose of statute as ensuring only "that one state might not disproportionately tax the purchase of bus tickets for travel through multiple states." Pet. App. 24a. Trips from O'Hare and Midway to destinations in "southern Wisconsin, or northern Indiana," the court observed, "are not analogous nor comparable to the type of city-to-city interstate bus trips of the type considered by the Supreme Court in [*Central Greyhound Lines, Inc. v. Mealy*, 334 U.S. 653 (1948)] or *Jefferson Lines* and focused on by Congress when enacting section 14505—trips where buses rather than aircraft were the means by which passengers engaged in long-distance, state-to-state travel." *Id.* Second, the court ruled that § 14505 had no application to the MPEA tax, which, the court held, "is imposed not on the *transportation* of passengers in interstate commerce but upon the *departures* of commercial vehicles from O'Hare and Midway. In other words, the 'taxable event' to which the airport departure tax attaches is not the interstate transportation of passengers but, rather, the ground transportation departures from the airport." *Id.* at 25a.

The foregoing are the essential grounds for the Appellate Court's decision. The court's opinion went on to discuss the fact that other federal statutes exempt taxicab service and motor carriage incidental to air transportation from *federal economic* regulation, but it does not explain how this discussion has any relevance to the scope of § 14505's protection of motor carriers from *state taxation* of their interstate transportation services. Pet App. 26a-28a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW PRESENTS IMPORTANT QUESTIONS WARRANTING THIS COURT'S REVIEW.

The Illinois Appellate Court's decision presents important questions concerning the scope and effectiveness not only of the recently enacted 49 U.S.C. § 14505 but also of the statute on which it was closely modeled, 49 U.S.C. § 40116(b), which has similarly protected air transportation of passengers from state taxation since it was enacted in 1973.

The principal basis for the court's decision was its conclusion that § 14505 does not apply to every tax, fee or charge upon the motor carrier transportation of passengers in interstate commerce, but only to taxes or fees on such transportation where the court finds that the tax is "disproportionate to the benefits received [by the taxpayer] in [the taxing] state" or finds that "the contact of the interstate bus trip to the taxing state was minor." Pet. App. 20a. The words of § 14505 contain no such limiting qualifications; instead, they broadly prohibit states from imposing any tax, fee, head charge or other charge on, among other things, "the transportation of a passenger traveling in interstate commerce by motor carrier." The terms of the statute would thus appear to bar a state tax on *any* interstate transportation, without regard to whether the part of the interstate trip in the taxing state was deemed "minor," "major," "proportionate" or "disproportionate." That was certainly ABA's understanding when it urged Congress to enact § 14505.

Whether § 14505 embodies the significant limitation attributed to it by the court below despite its plain language presents an extremely important question for all motor carriers providing interstate transportation, as well as for states who may wish to tax such transportation. Such a limitation would drastically curtail the scope of the statute

from the reach its language would indicate. Furthermore, it would make the application of the statutory protections vastly more difficult and uncertain. In each case, courts would have to determine not simply whether the transportation being taxed was interstate transportation, but whether the portion of the transportation occurring in the taxing state was "minor" and whether the taxes received by the taxing state were "disproportionate" to the benefits received in that state by the taxpayer. Rather than the straightforward, workable protections ABA and others supporting the enactment of § 14505 believed they would be receiving, the statute as construed by the Appellate Court would require courts to determine potentially difficult factual issues and apply them against exceedingly vague standards.[5]

The second basis for the Appellate Court's decision, which it applied to uphold the tax as to operators in Class A, presents equally important questions warranting this Court's review. The court held that the MPEA tax was not subject to § 14505 because it is not really a tax on transportation of passengers at all, but instead is merely a tax on "ground transportation departures from the airport." Pet. App. 25a. If this ruling is correct, the court below would have uncovered a huge, unsuspected loophole in § 14505, as well as in 49 U.S.C. § 40116 (b), the airline statute on which it was modeled. As noted in the Statement, the MPEA tax is not imposed on all persons using or departing O'Hare and Midway airports, but is imposed only on persons engaged in the business of providing ground transportation for hire to passengers, and only when such persons depart the airport with paying passengers. The amount of the tax depends either on the passenger capacity of the vehicle or the number

[5] Furthermore, the courts making these determinations would usually be the courts of the taxing states in view of the barriers to federal court jurisdiction erected by the Eleventh Amendment and the Federal Tax Injunction Act, 28 U.S.C.§ 1341.

of passengers being carried. If such a tax can evade the application of § 14505 on the ground that it is not a tax on the transportation of passengers but only a tax on airport departures, it is difficult to see what tax on transportation could not be recast or redescribed to effect a similar evasion.[6]

Furthermore, the decision below would enable states and localities easily to effect similar evasions of the ban on taxation of air passenger transportation in 49 U.S.C. § 40116 (b), which this Court reviewed and applied in *Aloha Airlines v. Director of Taxation of Hawaii*, 464 U.S. 7 (1983). Instead of directly taxing the air passengers or the air transportation and collecting the tax through the airlines, which § 40116 (b) prohibits, states or localities could do so indirectly by enacting "airport departure taxes" like the MPEA tax in this case and collect the taxes from the ground transportation companies that transport the airline passengers from their destination terminals. In fact, under the rationale of the decision below, states could collect passenger taxes or fees directly from the airline simply by styling them as a charge not on air transportation but upon the aircraft's "departure" from the airport.

The decision below has implications far beyond the MPEA tax at issue in this case. The reasoning of the Illinois Appellate Court would apply directly to, and have significant consequences for, hundreds of state and local taxes, fees and other charges that interstate motor carriers of passengers are actually or potentially subject to throughout the United States.

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[6] For example, although § 14505 was clearly intended to ban state sales taxes on bus interstate bus tickets, which were upheld against a Commerce Clause challenge in *Jefferson Lines*, such taxes could be recast as taxes on the departures of buses from bus terminals and, under the decision below, thereby pass muster under § 14505.

These include not only general sales taxes but also numerous taxes applied specifically to airport shuttle services.[7]

The importance of the questions presented and the far-reaching implications of the decision below warrant this Court's review. State and local taxes impose very substantial costs on interstate bus companies, and § 14505 imposes limitations on those taxes that are extremely important to the bus industry and the public it serves. The decision below threatens greatly to erode those protections, and it stands as an invitation to other states and localities to enact similar taxes or to apply existing ones in inappropriate ways.[8]

II. THE ILLINOIS APPELLATE COURT'S DECISION CONFLICTS WITH THE PLAIN LANGUAGE OF 49 U.S.C. § 14505 AND WITH MANY DECISIONS DEFINING INTERSTATE COMMERCE.

The decision below is also, ABA submits, clearly erroneous. It conflicts with the plain language of § 14505 as well as with numerous decisions, beginning with *United States v. Yellow Cab*, 332 U.S. 218 (1947), holding that a

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[7] A 1998 survey of 70 airports in the United States performed by the Airport Ground Transportation Association found that the large majority of them impose some form of ground transportation charge on commercial motor carriers serving the airports. "1998 Airport Ground Transportation Fees and Fares Survey" by Airport Ground Transportation Association (November 16, 1998).

[8] While the decision below does not yet conflict specifically with other decisions applying the recently-enacted § 14505, its construction of the term "interstate commerce" does, as we show in the following section, conflict with numerous decisions applying that term in other federal statutes. We also note that the importance of similar questions concerning the scope of 49 U.S.C. § 40116 (b) warranted this Court's review in *Aloha Airlines* despite the absence of conflicting lower court decisions construing that statute. The questions presented here are equally important to the nation's bus industry.

continuous, pre-arranged or commonly ticketed interstate trip is transportation in "interstate commerce."

Section 14505 expressly provides;

> A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—
>
> (1) a passenger traveling in interstate commerce by motor carrier;
>
> (2) the transportation of a passenger traveling in interstate commerce by motor carrier;
>
> (3) the sale of passenger transportation in interstate commerce by motor carrier; or
>
> (4) the gross receipts derived from such transportation.

Nothing in the language or the legislative history of this provision supports the Appellate Court's ruling that § 14505 applies only where the portion of the interstate trip in the taxing state is "minor" or where the tax is "disproportionate" to the benefits received by the taxpayer in the taxing state. The gloss put on the plain language of this provision by the court below is as unsupportable as the Hawaii Supreme Court's construction of 49 U.S.C. § 40116 (b) that this Court reversed in *Aloha Airlines*. In that case, the Hawaii Supreme Court relied on the legislative history of § 40116 (b) (then codified at 49 U.S.C.§ 1513(a)) to conclude that that section was not intended, despite its plain terms, to apply to gross receipts taxes. In reversing, this Court stated:

> [W]hen a federal statute unambiguously forbids the States to impose a particular kind of tax on an industry affecting interstate commerce, courts need not look beyond the plain language of the federal statute to determine whether a state statute that imposes such a tax is preempted.

464 U.S. at 12.

The same principle applies fully here. Contrary to the Appellate Court, there is no ambiguity in the language of § 14505 requiring the court to look beyond its terms. The term "interstate commerce" in the statute has a well-settled meaning that clearly encompasses the transportation provided by operators in both Class A and Class B. The motor transportation provided by Class A members is between Illinois and other states, and there is certainly no ambiguity that such transportation is in interstate commerce. As to Class B, many cases have settled the proposition that a continuous journey between two states via two or more modes which has been prearranged or is under a single ticket is an interstate journey. *See, e.g., Yellow Cab,* 332 U.S. at 228; *Executive Town and Country Services v. City of Atlanta*, 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine v. Dade County Board of Tax Commissioners*, 678 F.2d 586, 589 (5th Cir. 1982); *Southerland v. St. Croix Taxicab Association*, 315 F.2d 364 (3d Cir. 1963). It may reasonably be presumed that Congress drafted and enacted § 14505 against the background of this well-settled construction of the term "interstate commerce." It is a familiar principle of statutory construction that when the words of a statute have "a judicially settled meaning, . . . we must presume it was used in that sense by Congress." *United States v. Merriam*, 263 U.S. 179, 187 (1923). See also, *e.g., Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, 508 U.S. 152, 159 (1993). The opinion of the Appellate Court, however, makes no reference to the many decisions interpreting "interstate commerce" to include prearranged or commonly ticketed trips, although petitioners urged them strongly upon it.[9]

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[9] The Appellate Court's opinion appears to have found the term "interstate commerce" to be ambiguous only with respect to the transportation provided by Class B members. *See* Pet. App. 17a-18a. Neither the court nor MPEA contended that transportation provided by Class A members was not interstate commerce. Yet the court relied on its

In any event, even if it were appropriate to look beyond the plain language of the statute, nothing in the legislative history supports the gloss the Appellate Court placed upon it. It is certainly true, as the pertinent committee reports indicate, that Congress enacted § 14505 in response to this Court's decision in *Jefferson Lines*, which held that a state sales tax on the sale of an interstate bus ticket did not violate the dormant Commerce Clause. And it is also true that at least part of Congress' purpose was to overturn the result of that case. But it is manifestly *not* true that Congress intended the protections of the statute to apply only to the kind of taxes involved in that case and only to the kind of transportation involved in that case. Nothing in the reports or other legislative history suggests such an intent, and the imputation of such an intent is refuted by the plain language of the statute, which broadly prohibits not only sales taxes but also any "tax, fee, head charge or other charge" on four specified activities, including both sales of and gross receipts derived from the transportation of passengers traveling in interstate commerce.

The broad and encompassing terms of § 14505 clearly indicate Congress' intent to bar any form of charge imposed by states and their political subdivisions on the motor carrier transportation of passengers in interstate commerce. The breadth of these terms also refute the second holding of the Appellate Court, that a charge can evade the application of § 14505 by denominating itself a charge on "departures" rather than on "transportation." If they are not to be defeated by mere semantics, the protections of § 14505 must turn on the substance of the activity being taxed, and the substance of the activity taxed by the MPEA tax here is the transportation

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view of the legislative history to conclude that the statute did not apply to the transportation provided by both classes. *Id.* at 20a-21a.

of passengers for hire by motor vehicle. *See Aloha Airlines*, 464 U.S. at 13-14.[10]

Finally, there is no merit in the Appellate Court's reliance on the scope of various statutes exempting taxi service and motor carriage incidental to air from *federal economic* regulation of rates, routes and services as supporting its construction of § 14505's ban on *state taxation* of interstate motor carrier transportation of passengers. What Congress chooses to subject to federal economic regulation has nothing to do with what Congress may choose to restrict states from taxing. *Buck v. California*, 343 U.S. 99 (1952), cited by the court below (Pet. App. 26a) was decided long before § 14505 was enacted and has no bearing on the issue in this case.

In sum, like the Hawaii Supreme Court decision reversed in *Aloha Airlines*, the Illinois Appellate Court has strained for reasons to find a federal tax preemption statute inapplicable to taxes and to transportation that the unambiguous words of the statute appear clearly to cover. The court below erred both in going beyond the statutory language and in the reasons given for its strained construction.

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[10] In *Aloha Airlines* and other cases construing and applying 49 U.S.C.§ 40116 (b), the airline counterpart of § 14505, courts have consistently held that the scope of the statute turns on the substance of what is being taxed, not on '[t]he manner in which state legislature has described and categorized" the tax (464 U.S. at 13), and that taxes that are triggered or measured by the air transportation of passengers come within the reach of that statute's prohibitions. *See also Alaska Airlines v. Department of Food and Agriculture*, 33 Cal. App.4th 506, 513 (Cal. App. 1995); *United Airlines v. County of San Diego*, 1 Cal. App.4th 418, 430-431 (Cal. App. 1991).

CONCLUSION

The Court should grant the petition for a writ of certiorari in this case.

Respectfully submitted,

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No. 00-1240

IN THE

Supreme Court of the United States

TRI-STATE COACH LINES, INC., on behalf of itself and others similarly situated, SAM VAN GALDER, INC., on behalf of itself and others similarly situated, ADVANTAGE LIMOUSINE, INC., on behalf of itself and others similarly situated,

Petitioners,

v.

METROPOLITAN PIER AND EXPOSITION AUTHORITY, a body politic and municipal corporation,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioners refer the Court to page ii of the Petition.

The Metropolitan Pier and Exposition Authority ("MPEA") misapprehends the reliance petitioners place on this court's decision in *Aloha Airlines v. Director of Taxation,* 464 U.S. 7 (1983). The petitioners do not contend that the case presents precisely the same issue, as different statutes are at issue. Rather, petitioners contend that the Appellate Court's restrictive interpretation of the section 14505(2) preemption language conflicts with this Court's interpretation of virtually identical express preemption language at issue in *Aloha Airlines*. The only distinction is that in *Aloha Airlines* the preemption before the Court addressed air commerce rather than ground transportation. Virtually identical language employed by Congress in two different statutes should not be construed to achieve contrary results.

To support its contention that the decision below does did not conflict "with a decision of this or any other court," the MPEA relies on *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355 (1994); *Kamikawa v. United Parcel Serv., Inc.*, 966 P.2d 648, 652 (Haw. 1998), and *Kamikawa v. Lynden Air Freight, Inc.*, 968 P.2d 653 (Haw. 1998), *cert. denied*, 526 U.S. 1087 (1999). (Brief in Opp. p. 11). According to the MPEA, those cases demonstrate that the Appellate Court decision is consistent with *Aloha Airlines*.

However, those cases support petitioners here. In *Northwest Airlines*, this Court construed the scope of the statutory provisions contained in the federal Anti-Head Tax Act (AHTA), 49 U.S.C. App. § 1513(b) [now codified as 49 U.S.C. § 40116(b)], which prohibits states and political subdivisions from levying a "fee" or "other charge directly or indirectly" on "persons traveling in air commerce or on the carriage of persons traveling in air commerce." The AHTA, unlike the ICCTA at issue here, contains a savings clause which is an exception to the express preemption otherwise provided. The savings clause declares that "nothing in this section shall prohibit a State (or political subdivision thereof . . .) owning or operating an

airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities." 49 U.S.C. App. § 1513(b) [now codified as 49 U.S.C. § 40116(b)]. Congress chose not to include any savings clause in section 14505 of the ICCTA, and *Northwest Airlines* therefore supports petitioners' argument, not the MPEA's. In this case, the Appellate Court judicially created the savings clause.[1]

The two state court cases, *Kamikawa v. United Parcel Serv., Inc.*, 966 P.2d 648 (Haw. 1998) and *Kamikawa v. Lynden Air Freight, Inc.*, 968 P.2d 653, (Haw. 1998), *cert. denied*, 526 U.S. 1087 (1999), are irrelevant. Both cases hold that the federal preemption of state taxation of gross revenues from air commerce does not extend to ground transportation. Here, the ICCTA preemption clearly focuses on interstate ground transportation only. Neither of the *Kamikawa* cases has anything to do with the issue addressed in *Aloha* and raised by petitioners. *See Kamikawa v. Lynden Air Freight, Inc.*, 968 P.2d 653, 657 (Haw. 1998) ("We, therefore, reject Lynden's characterization of the present action as an attempt to "unjustly force[] Lynden to litigate the same issue [raised in Aloha Airlines]."

This Court's opinion in *Aloha Airlines* is pertinent to the question presented here, and the Appellate Court opinion conflicts with its jurisprudence. In the Appellate Court, the petitioners relied heavily on *Aloha Airlines*. Rather than accepting the MPEA's invitation to distinguish *Aloha Airlines*, the Appellate Court ignored it.

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1. If Congress had enacted a similar savings clause in section 14505 of the ICCTA, the Airport Departure Tax would not qualify to invoke it. The Airport Departure Tax is an occupation tax levied on those who provide for-hire ground transportation from the airports, not a user fee. (*See* MPEA Airport Departure Tax Ordinance 1-3: "There is hereby imposed an occupation tax . . .") Moreover, the MPEA neither owns nor operates the Chicago airports.

The MPEA strains to avoid the import of many of the cases cited by petitioners that construe the term "interstate commerce" by arguing that most (but admittedly not all) of those cases concerned the reach of the dormant Commerce Clause. (Brief in Opp. p. 13). Their argument amounts to a distinction without a difference. It is beyond dispute that the term "interstate commerce" has acquired a settled judicial meaning, and it must be presumed Congress employed that meaning when it used the term in a statute. *See, e.g., United States v. Merriam*, 263 U.S. 179, 187 (1923). It is irrelevant whether the decisions imparting that meaning involved constitutional or statutory issues.

The MPEA admits that *Airline Transportation, Inc. v. Tobin*, 98 F.2d 249 (4th Cir. 1952), concerned the meaning of interstate commerce when used in a statute, but the MPEA attempts to distinguish *Tobin*, because the transportation involved was pursuant to a contract with the airline. (Brief in Opp. p. 13). The alleged distinction does not assist the MPEA, because the plaintiff classes include motor carriers that provide ground transportation pursuant to contracts with airlines for through ticketing or excursions.

To support its contention that the Appellate Court's restrictive construction of section 14505(2) is "a routine application of federal preemption principles," the MPEA cites *United States v. Yellow Cab Co.*, 332 U.S. 218, 231, and other cases holding that local taxicab service is not an integral part of interstate transportation. (Brief in Opp. p. 14). The MPEA's reliance on those cases only confuses the issue. Neither of the plaintiff classes includes local taxicab operators. The plaintiffs provide service only through special arrangements; they do not participate in the taxicab trade at the airports.

The MPEA also misrepresents the holding in *Yellow Cab*. It is true that this Court held in *Yellow Cab* that local taxicab service conveying interstate train passengers between the

railroad station and their homes did not constitute interstate commerce, because the link between the train trip and the passenger's subsequent election to walk outside the station to hail a cab was too attenuated. However, the MPEA ignores the portion of the *Yellow Cab* decision holding that local transportation provided pursuant to prearrangement constituted interstate commerce. This Court also suggested in *Yellow Cab* that other arrangements, e.g., cabs serving only railroad passengers, or fares paid and collected as part of railroad fares, might also be considered transportation of passengers traveling in interstate commerce. *Id.* at 231.

There is no basis for the MPEA's argument that using prearrangement as a criterion for transportation exempt from state taxation is unworkable. (Brief in Opp. p. 15). As the cases reflect, prearrangement has been used as a criterion in other contexts without apparent difficulty. In any event, any burden would fall upon the petitioners to prove their right to appropriate remedies.

The MPEA repeats the conclusion of the Appellate Court that the tax here is not on transportation, but only on "departures." (Brief in Opp. p. 15). This is a semantic argument with no substance, akin to the argument that the State of Hawaii made and that this Court rejected in *Aloha Airlines*. The MPEA has no right to charge the petitioners for departing a facility that the MPEA neither owns nor operates. Moreover, the Illinois General Assembly authorized the MPEA to impose only an occupation tax, not a toll. The occupation tax is not imposed on every vehicle using or departing the airports, but only on transportation companies when they are transporting passengers for hire. Moreover, the amount of the tax varies based upon the passenger capacity of the vehicles or the number of passengers carried.

Finally, to support its argument that in section 13501 of the ICCTA (the chapter that defines the Surface Transportation Board's regulatory jurisdiction) Congress restricted the breadth

of the section 14505(2) preemption, the MPEA improperly characterizes this Court's holding in *Wardair Canada v. Florida Department of Revenue*, 477 U.S. 1 (1986). The MPEA describes this Court's holding as "recognizing that the power to tax is coextensive with the power to regulate." (Brief in Opp. p. 17 n.4). The Court did not say that, either expressly or impliedly.

In *Wardair,* this Court held that the Federal Aviation Act, 49 U.S.C. App. § 1301, *et seq.* (1982 ed. and Supp. II), did not prohibit Florida from taxing the sale of airline fuel, because "not only is there no indication Congress wished to preclude state sales taxation of airline fuel, but, to the contrary, the Act expressly permits States to impose such taxes." *Id.* at 6. In so ruling, this Court noted that the Federal Aviation Act, unlike section 14505 of the ICCTA, specified the kinds of taxes, including "taxes on the sale of goods or services," that are permissible. Thus, as in the *Northwest Airlines* decision discussed previously, the plain language of the statute in question expressly permitted the tax at issue.

Similarly, the MPEA's reliance on *Buck v. California*, 343 U.S. 99 (1952) is misplaced. This Court did not hold in *Buck* that the authority Congress gave to California to regulate ground transportation also served to define California's authority to tax. *Buck* involves California's authority to regulate the qualifications of taxicab operators and to charge a $1 fee for a driver's permit. *Buck* did not address California's right to contravene a statute expressly preempting its ability to tax.

Since the arguments the MPEA presents in its opposing brief distort the question presented, rely on irrelevant case law, fail to recognize the petitioners' actual role at the airports, and misstates the holdings of this Court, the need for plenary review of the decision below is indisputable.

CONCLUSION

Wherefore, for the foregoing reasons, Petitioners respectfully request that the petition for writ of certiorari be granted.

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